

BULKY DOCUMENT

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Proceeding No.	92057838
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Filing Date	12/18/2013
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Part	1 of	1
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92057838

TTAB

12-14-2013

Albert Patterson. d/b/a/

WWA Superstars of Wrestling

3840 N. Sherman Blvd.

Milwaukee, Wisconsin 53216.

To

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

I. INTRODUCTION

Mr. Verdini requested to dismiss my cancellation request for the mark of No. 92/057,838. This request should be rejected. In Exhibit II, Verdini stated that a settlement transcript 'explicitly manifested my understanding and acceptance of the terms of the settlement, (see Ex. 2 at 18-19) This transcript is false.

I am petitioning to reopen cancellation No. 92057838, Albert Patterson v. World Wrestling Entertainment Inc. See trademark rule 202.03.

1) It is clear likelihood of confusion with protestor's registered marks.

2) World Wrestling Association (w.w.a.)

- First use 06 - 19 - 1978
- Registered Jan 31, 2006
- Reg. no. 3,051,928 7 years

3) Superstars of wrestling "SW" entertainment services in the nature of television program featuring wrestling first use 1979 as to "superstars of wrestling" registration day Oct 04, 1994 Reg. no. 1857015 22 years

Christopher M. Verdini
210 sixth ave
Pittsburgh, PA 15222

Thank you

Albert Patterson

WORLD WRESTLING ENTERTAINMENT INC
1241 EAST MAIN STREET
STAMFORD, CT 06902
UNITED STATES

12-18-2013

EXHIBITS # 5



Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451
www.uspto.gov

September 16, 2009

Mr. Albert P. Patterson
3840 North Sherman Blvd.
Milwaukee, WI 53216

Re: Letters of Protest concerning Trademark Application Serial No(s). 77626294, 77626281, 77626327, 77626242 and 77626253 all for the mark WWE SUPERSTARS

Dear Mr. Patterson:

The Office of the Deputy Commissioner for Trademark Examination Policy has reviewed your Letters of Protest pursuant to Sections 1715-1715.07 of the Trademark Manual of Examining Procedure (TMEP) and the Letters of Protest in Pending Trademark Applications Examination Guide (No. 4-08, issued Nov. 21, 2008).

Decision: The Letters of Protest are hereby GRANTED.

Your Letters of Protest are granted because the information submitted with them is of the type which may be given to an Examining Attorney for consideration during *ex parte* examination. TMEP Section 1715. The examining attorney will be forwarded information regarding the possible likelihood of confusion.

The forwarding of the information enclosed in your Letter of Protest does not entitle you to communicate directly with the Examining Attorney, either orally or in writing, with regard to this application. Further, because this Letter of Protest was granted prior to the publication of the mark for opposition, it is within the discretion of the Examining Attorney to decide whether or not to institute the refusal, requirement or suspension raised by the evidence presented with the Letter of Protest. Therefore, you must continue to monitor the status of the application. You will find status information on all trademark applications and registrations using the on-line TARR system at the USPTO web site. The URL for that system is <http://tarr.uspto.gov>.

Regards,

/CGJ/
Charles G. Joyner
Staff Attorney
Office of the Deputy Commissioner for
Trademark Examination Policy
(571) 272-8942





Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451
www.uspto.gov

January 26, 2011

Mr. Albert P. Patterson
Super Stars of Wrestling
3840 N. Sherman Blvd.
Milwaukee, WI 53216

Re: Submissions to the Commissioner for Trademarks of December 30, 2010
Serial Nos. 77-626294, 77-626281, 77-626327, 77-626242, 77-626253
Applicant: World Wrestling Entertainment, Inc.
Mark: WWE SUPERSTARS

Dear Mr. Patterson:

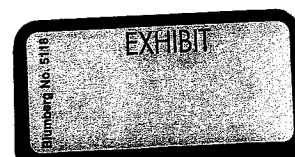
The United States Patent and Trademark Office received your communication providing exhibits relating to your intellectual property. Your correspondence was not characterized as a letter of protest and has not been referred to for decision as such.

Please be advised that submissions by third parties to the trademark applications of other applicants are not permitted. Should you wish to formally file a letter of protest, please refer to the Trademark Manual of Examining Procedure (TMEP) (7th ed., 2010) for more information. http://tess2.uspto.gov/tmdb/tmep/1700.htm#_T1715 Letters of protest may not be submitted to the general trademarks correspondence address as they are not to become part of the application file record unless accepted by the Office of the Deputy Commissioner for Trademark Examination Policy. TMEP §1715

Letters of protest may be submitted via facsimile to 571-273-0032 or online at <http://www.uspto.gov> in the Trademark Electronic Application System (TEAS) under "Petition Forms," form 10 - Letter of Protest.

Sincerely,

Jennifer Chicowski
/Jennifer D. Chicowski/
Staff Attorney
Office of the Commissioner for Trademarks
U.S. Patent & Trademark Office





United States Patent and Trademark Office

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**SW
SUPERSTARS OF WRESTLING**

Word Mark	SUPERSTARS OF WRESTLING SW
Goods and Services	IC 041. US 107. G & S: entertainment services in the nature of television programs featuring wrestling. FIRST USE: 19790000. FIRST USE IN COMMERCE: 19790000
Mark Drawing Code	(3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS
Design Search Code	01.01.03 - Comets; Stars with five points
Serial Number	74429666
Filing Date	August 30, 1993
Current Filing Basis	1A
Original Filing Basis	1A
Published for Opposition	July 12, 1994
Registration Number	1857015
Registration Date	October 4, 1994
Owner	(REGISTRANT) Patterson, Albert P. DBA WWA SUPERSTARS OF WRESTLING INDIVIDUAL UNITED STATES 3840 NORTH SHERMAN BLVD. Milwaukee WISCONSIN 53216
Disclaimer	NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "WRESTLING" APART FROM THE MARK AS SHOWN
Type of Mark	SERVICE MARK
Register	PRINCIPAL-2(F)-IN PART
Affidavit Text	SECT 15. SECT 8 (6-YR). SECTION 8(10-YR) 20050415.
Renewal	1ST RENEWAL 20050415
Live/Dead Indicator	LIVE
Distinctiveness Limitation Statement	as to "SUPERSTARS OF WRESTLING"



boos. They're lying.

Any player who has an ounce of self-worth is aware and is affected, in degrees, by the reactions of the fans. You don't realize what kind of effect you can have on a football team.

You fans were greatly responsible for our success against New England on Monday night television.

The fans' reactions helped get us to an all-time emotional peak that night. Everything we did, you went crazy. Your obvious confidence carried out on the field to us and that gave us confidence. Nobody in the world gave us a chance to win that game. But the feelings we got from you helped us win.

But just as your reaction that night was helpful, when you boo, it becomes counter-productive.

Lately, people have been booing Chester Marcol and James Lofton. They've been booing all of us.

And it's that kind of behavior that makes me wonder sometimes about the genuineness of some Packers fans. How can you love us one week and hate us the next?

These two who have contributed so much to the Packers, and who are trying so hard, deserve better than they are receiving. When James fumbled against the Jets and, was booed, people quickly forgot that it was his catch that set up our first touchdown. Sitting up there in the stands, you all felt bad about the fumble. Well, nobody in that whole stadium felt worse than James.

I can understand his reaction when he heard those boos. Any player on any team has a lot of confidence and ego. It's usually that ego that got them where they are today. And it's that ego that makes those boos hurt so much.

Packers replace injured Marcol

Green Bay, Wis. — AP — The Green Bay Packers signed free agent placekicker Tom Birney Wednesday and put veteran kicker Chester Marcol on the injured reserve list.

Birney, 23, had a tryout with the New England Patriots in 1978 and was with the Packers in training camp this year before he was released Aug. 15. He averaged 59 yards for three kickoffs in National Football League exhibition games against Kansas City and Cincinnati.

"Tom was very competitive in training camp and showed good intermediate field goal range," said Fred vonAppen, Packers' special teams coach. Birney, a former Michigan State kicker, has been a substitute teacher in Cass City, Mich., since the Packers cut him.

The Packers worked him out here Tuesday and Wednesday after Marcol had aggravated a pulled leg muscle in Sunday's 27-22 defeat by the New York Jets.

Marcol will be on injured reserve for at least four weeks.

Giants sign Odom; Lions cut Golsteyn

AP and UPI

Return specialist Steve Odom, who was released by the Green Bay Packers last week, was signed Wednesday by the New York Giants of the National Football League, who released Bobby Hammond.

Also, West Allis native Jerry Golsteyn, a quarterback who started the season with the Giants, went to the San Francisco 49ers and then to the Detroit Lions, was waived Wednesday by the Lions.

without you.

As Teddy said...

In my hume, I've got a saying from Teddy Roosevelt that means an awful lot to me. May, you've heard it before. But I want to end with it:

"It is not the critic who counts, not the man who points out how the strong man stumbled, or where the door of deeds could have done them better. The credit belongs to the man who is actually in the arena; whose face is marred by dust and sweat and blood; who strives valiantly; who errs and comes short again and again; who knows the great enthusiasms, the great devotions, and spends himself in a worthy cause; who, at the best, knows in the end the triumph of high achievement; and who, at the worst, if he fails, at least fails while daring greatly, so that his place shall never be with those cold and timid souls who know neither victory nor defeat."

Gymnastics tourney set

A girls' gymnastics open and invitational tournament, sponsored by the L.A. Gymnastics Academy Bousier Club, will be held Nov. 17-18 at Greenfield High School. The open meet will be held Nov. 17, beginning at 9:30 a.m. The invitational meet will begin Nov. 18 at 10 a.m.

Run registration set

Last-minute registration for Saturday's Dannon Discovery Run at the Milwaukee Lakelands will be held Friday from 3-7 p.m. at the War Memorial Arts Center. There will be no registration Saturday.

SUPER STAR WRESTLING

MILWAUKEE AUDITORIUM
SATURDAY, NOVEMBER 10th,
8:00 P.M.

★ ★ 25 SUPER STARS ★ ★
MAIN EVENT

SIX MAN CAGE MATCH

Special Referee: Former World Heavyweight Champion

ERNE TERRELL



KING KONG

300 lbs., Milwaukee

JEFF MAY

260 lbs., Milwaukee

INDIAN PETE

250 lbs., Milwaukee

COMMANDO MAD DOG

240 lbs., Oklahoma

DEMON I

250 lbs., ???

DEMON II

260 lbs., ???

SEMI EVENT

DICK REYNOLDS

250 lbs., Milwaukee

VS

RODEO JONES

285 lbs., Texas

SEMI EVENT

WORLD LIGHT WEIGHT TAG TEAM CHAMPIONSHIP BOUT

BAD BRAIN LUCAS

170 lbs., Milwaukee

RED ALLEN

175 lbs., Milwaukee

VS

THUNDERBOLT WILLIAMS

180 lbs., Los Angeles

FLASH

170 lbs., Mexico

PLUS 8 OTHER BOUTS

*** Tickets: \$7.00, \$6.00, \$5.00, \$4.00 ***

Tickets Available at Milwaukee Auditorium — Arena Box Office and Most Area Sports Stores

Low priced
RADIAL
SNOW TIRES!
\$45

P155/
15AR.
Plus 1
No in
Fire
Fib

Size	Alt
P165/80R13	AR
P175/80R13	BR
P195/75R14	ER
P205/75R14	FR
P215/75R15	GR
P225/75R15	HR
P235/75R15	LR

All prices plus tax. No trade-in needed. Other sizes conspicuously priced.

Fire

Town & Country
Polyester cord
SNOW BITER

\$28 A78-13 Black
Plus \$1.68 P.E.T.

Size	Black	P.E.T.
P155/80R13	\$28	\$1.48
H78-14	38	1.49
C78-13	38	2.10
C78-14	38	2.07
H78-14	39	2.10
H78-14	41	2.29
F78-14	43	2.42
C78-14	44	2.56
H78-14	47	2.43
C80-15	35	1.52
C80-15L	36	2.03
C78-15	46	2.62
H78-15	47	2.81
L78-15	48	3.14

No trade-in needed.
Other sizes also available.
Wholesale extra.

COUPON

FOREVER BATTERY

The lifetime guaranteed
Forever battery is the last
battery you'll have to buy
for your car. And it's
maintenance free.

\$10 OFF

12 volt exchange

RADIATOR FLUSH AND FILL SERVICE

\$19.88

Most Amer.

Cars

1. Flush entire system

2. Check all hoses and clamps

3. Install "T" Clamp

4. Add coolant and anti-freeze up to 2 gallons

Heater and bypass service extra

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90 DAYS SAME AS

on revolving charge at Firest

• All finance charges returned when

FREE MOUNTING OF FI

Prices and stock plans shown are available at Firestone stores. See p

plans. Service others not available



SENTRY
INSURANCE

HOMEOWNERS

The Milwaukee Journal of February 26, 1979, reported that Sentry has best prices in two types of homeowners insurance. Compared were pr Form II broad form coverage (the most common) and Form III special coverage. You get a fair price and superior protection with Sentry.

EXHIBIT

11-10-79



Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451
www.uspto.gov

LETTER OF PROTEST MEMORANDUM

DATE: September 15, 2009

TO: Jenny Park
Law Office 104

FROM: Charles G. Joyner
Office of the Deputy Commissioner for
Trademark Examination Policy

SUBJECT: Letter of Protest concerning Application Serial No. 77626253

A Letter of Protest filed before publication has been granted. It has been determined that the information submitted by the protester is relevant and supports a reasonable ground for refusal appropriate in *ex parte* examination. Therefore, you must consider the following and make an independent determination whether to issue a requirement or refusal based on the objections raised in the Letter of Protest:

Possible Likelihood of confusion with protester's registered mark

U.S. Reg No. 1857015

A copy of the registration is available in the x-search database.



Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451
www.uspto.gov

LETTER OF PROTEST MEMORANDUM

DATE: September 15, 2009

TO: Jenny Park
Law Office 104

FROM: Charles G. Joyner
Office of the Deputy Commissioner for
Trademark Examination Policy

SUBJECT: Letter of Protest concerning Application Serial No. 77626327

A Letter of Protest filed before publication has been granted. It has been determined that the information submitted by the protester is relevant and supports a reasonable ground for refusal appropriate in *ex parte* examination. Therefore, you must consider the following and make an independent determination whether to issue a requirement or refusal based on the objections raised in the Letter of Protest:

Possible Likelihood of confusion with protester's registered mark

U.S. Reg No. 1857015

A copy of the registration is available in the x-search database.



Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451
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LETTER OF PROTEST MEMORANDUM

DATE: September 15, 2009

TO: Jenny Park
Law Office 104

FROM: Charles G. Joyner
Office of the Deputy Commissioner for
Trademark Examination Policy

SUBJECT: Letter of Protest concerning Application Serial No. 77626281

A Letter of Protest filed before publication has been granted. It has been determined that the information submitted by the protester is relevant and supports a reasonable ground for refusal appropriate in *ex parte* examination. Therefore, you must consider the following and make an independent determination whether to issue a requirement or refusal based on the objections raised in the Letter of Protest:

Possible Likelihood of confusion with protester's registered mark

U.S. Reg No. 1857015

A copy of the registration is available in the x-search database.

Int. Cls.: 35 and 41

Prior U.S. Cls.: 100, 101, 102 and 107

United States Patent and Trademark Office

Reg. No. 3,051,928

Registered Jan. 31, 2006

**SERVICE MARK
PRINCIPAL REGISTER**

WORLD WRESTLING ASSOCIATION

**PATTERSON, ALBERT (UNITED STATES INDIVIDUAL), DBA WWA SUPERSTARS OF WRESTLING
3840 N. SHERMAN BLVD.
MILWAUKEE, WI 53216**

FOR: PROMOTING WRESTLING COMPETITIONS OF OTHERS, IN CLASS 35 (U.S. CLS. 100, 101 AND 102).

FIRST USE 6-19-1978; IN COMMERCE 6-19-1978.

FOR: ENTERTAINMENT SERVICES IN THE NATURE OF WRESTLING MATCHES; WRESTLING VIDEOTAPE PRODUCTION; AND ENTERTAINMENT SERVICES IN THE NATURE OF

ONGOING TELEVISION PROGRAMS FEATURING WRESTLING, IN CLASS 41 (U.S. CLS. 100, 101 AND 107).

FIRST USE 6-19-1978; IN COMMERCE 6-19-1978.

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE WRESTLING ASSOCIATION, APART FROM THE MARK AS SHOWN.

SEC. 2(F).

SER. NO. 75-879,939, FILED 12-23-1999.

KELLY BOULTON, EXAMINING ATTORNEY



United States Patent and Trademark Office

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Typed Drawing

Word Mark	WORLD WRESTLING ASSOCIATION
Goods and Services	IC 041. US 100 101 107. G & S: entertainment services in the nature of wrestling matches; wrestling videotape production; and entertainment services in the nature of ongoing television programs featuring wrestling. FIRST USE: 19780619. FIRST USE IN COMMERCE: 19780619
	IC 035. US 100 101 102. G & S: promoting wrestling competitions of others. FIRST USE: 19780619. FIRST USE IN COMMERCE: 19780619
Mark Drawing Code	(1) TYPED DRAWING
Design Search Code	
Serial Number	75879939
Filing Date	December 23, 1999
Current Filing Basis	1A
Original Filing Basis	1A
Published for Opposition	November 8, 2005
Registration Number	3051928
Registration Date	January 31, 2006
Owner	(REGISTRANT) Patterson, Albert DBA WWA Superstars of Wrestling INDIVIDUAL UNITED STATES 3840 N. Sherman Blvd. Milwaukee WISCONSIN 53216
Attorney of Record	ALBERT PATTERSON
Disclaimer	NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE WRESTLING ASSOCIATION APART FROM THE MARK AS SHOWN
Type of Mark Register	SERVICE MARK PRINCIPAL-2(F)



EXHIBIT 1



FOR IMMEDIATE RELEASE

Contacts:

Investors: Michael Weitz 203-352-8642

Media: Robert Zimmerman 203-359-5131

WWE® Reports 2011 Fourth Quarter and Full Year Results

STAMFORD, Conn., February 23, 2012 - WWE (NYSE:WWE) today announced financial results for its fourth quarter ended December 31, 2011. Revenues totaled \$112.9 million as compared to \$122.5 million in the prior year quarter. Operating loss was (\$13.1) million as compared to Operating income of \$14.4 million in the prior year quarter. Net loss was (\$8.6) million, or (\$0.12) per share, as compared to Net income of \$8.1 million, or \$0.11 per share, in the prior year quarter. Excluding the impact of film impairments and network related expenses in the current year quarter, Adjusted Operating income was \$3.1 million as compared to \$14.4 million in the prior year quarter. Adjusted Net income was \$1.8 million, or \$0.02 per share, as compared to \$8.1 million, or \$0.11 per share, in the prior year quarter.

"In 2011, we evaluated several paths for creating new programs and distributing all of our content in a way that optimizes its value. Executing this strategy effectively, including the potential creation of a WWE Network, has the power to transform our business," stated Vince McMahon, Chairman and Chief Executive Officer. "While we made significant progress toward this objective, our fourth quarter and full year results were impacted primarily by three items: significant non-cash film impairment charges stemming from the weak performance of our movie releases, strategic decisions to withhold several hours of previously licensed television content for distribution on other platforms, and initial start-up operating expenses associated with our emerging content and distribution strategy. Regarding the first item, we have taken several measures to improve the profitability of our movie business. And, regarding the other items, we believe that our ongoing investment to expand and maximize the value of our content is the most potent approach for driving our future earnings."

Comparability of Results

The current year quarter results included \$12.2 million in film impairment charges related to our films *The Reunion*, *Bending the Rules*, *Barricade*, *See No Evil*, *Knucklehead* and *The Chaperone*. In addition, the current year quarter results included approximately \$4.0 million in network related expenses. In order to facilitate an analysis of our financial results on a more comparable basis, where noted, we have adjusted our results to exclude these items from our fourth quarter of 2011 results. Excluding the impact of these items, Adjusted Operating income decreased to \$3.1 million and Adjusted EBITDA decreased to \$7.2 million. (See Supplemental Information – Schedule of Adjustments).

Three Months Ended December 31, 2011 – Results by Business Segment

Total revenues decreased 8% to \$112.9 million driven by declines across all of our operating segments. Revenues from North America decreased by 9%, led by declines in our WWE Studios, Television, and WWE.com businesses. Revenues outside North America decreased 5%, primarily due to a decline in our Licensing business, which was partially offset by increased revenue in Live Events. Revenue from Asia Pacific and Latin America benefited from an increase in the number and the timing of our live events. Additionally, revenue growth in the Asia Pacific region reflected higher sales of licensed and home video products. There was no significant impact from changes in foreign exchange rates in the current year quarter.

The following tables reflect net revenues by segment and by region for the three months ended December 31, 2011 and December 31, 2010. (Dollars in millions)

<u>Net Revenues</u>	Three Months Ended	
	December 31, 2011	December 31, 2010
Live and Televised Entertainment	\$ 81.0	\$ 82.4
Consumer Products	18.7	21.9
Digital Media	8.9	10.3
WWE Studios	4.3	7.9
Total	<u>\$ 112.9</u>	<u>\$ 122.5</u>

<u>Net Revenues by Region</u>	Three Months Ended	
	December 31, 2011	December 31, 2010
North America	\$ 78.2	\$ 85.9
Europe, Middle East & Africa (EMEA)	19.1	24.7
Asia Pacific (APAC)	9.4	6.4
Latin America	6.2	5.5
Total	<u>\$ 112.9</u>	<u>\$ 122.5</u>

Live and Televised Entertainment

Revenues from our Live and Televised Entertainment businesses were \$81.0 million for the current quarter as compared to \$82.4 million in the prior year quarter, representing a 2% decrease.

- **Live Event revenues** were \$26.9 million as compared to \$26.6 million in the prior year quarter. Revenues increased 1% as an increase in overall average ticket prices was offset by the occurrence of 6 fewer events in the quarter.
- There were 78 events, including 31 international events, during the current quarter as compared to 84 events, including 26 international events, in the prior year quarter.

- North American events generated \$12.7 million of revenues from 47 events as compared to \$13.1 million from 58 events in the prior year quarter. North American average attendance increased 7% to approximately 6,000 from 5,600 in the prior year quarter, due in part to changes in the mix of venues. The average ticket price for North American events was \$42.87 in the current quarter as compared to \$39.31 in the prior year quarter.
- International events generated approximately \$14.2 million of revenues from 31 events as compared to \$13.5 million from 26 events in the prior year quarter. The increase in revenue was primarily due to the occurrence of five more events in the current year quarter. International average attendance decreased 16% to 6,300 from 7,500 in the prior year quarter, due in part to territory mix. Average ticket prices were \$66.27 as compared to \$66.06 in the prior year quarter.
- **Pay-Per-View revenues** were \$14.6 million as compared to \$13.8 million in the prior year quarter, reflecting a 2% increase in total pay-per-view buys. Buys for the four comparable events in the current and prior year quarter declined 3%, but were more than offset by an increase in prior period buys, which resulted in a 6% increase in pay-per-view revenue.

The details for the number of buys (in 000s) are as follows:

<u>Broadcast Month</u>	<u>Events (in chronological order)</u>	<u>Three Months Ended</u>	
		<u>December 31,</u>	
		<u>2011</u>	<u>2010</u>
October	<i>Hell in a Cell</i> ™	182	210
October	<i>Vengeance</i> ™/ <i>Bragging Rights</i> ™	121	137
November	<i>Survivor Series</i> ®	281	244
December	<i>WWE TLC</i> ™	179	195
Prior events		33	(2)
Total		<u>796</u>	<u>784</u>

- **Television Rights Fees revenues** were \$33.9 million as compared to \$35.7 million in the prior year quarter. This decrease was primarily due to the absence of domestic rights fees for our *WWE Superstars* program.
- **Venue Merchandise revenues** were \$3.9 million as compared to \$3.7 million in the prior year quarter, as the impact of a 7% increase in domestic per capita merchandise sales to \$9.81, was partially offset by a 5% decrease in total domestic attendance in the current year quarter.

Consumer Products

Revenues from our Consumer Products businesses decreased 15% to \$18.7 million from \$21.9 million in the prior year quarter, primarily due to the performance of our Licensing and Publishing businesses, partially offset by improved results in our Home Video business.

- **Home Entertainment net revenues** were \$6.5 million as compared to \$5.8 million in the prior year quarter, representing a 12% increase that was primarily due to an adjustment in the prior year quarter. Gross domestic retail revenue declined 14%, or \$1.8 million, due to an 8% decrease in shipments to 825,000 units and a 5% decline in average effective prices to \$13.50. The prior year quarter included an adjustment for lower sell-through expectations of prior year releases.
- **Licensing revenues** were \$9.5 million as compared to \$12.3 million in the prior year quarter as lower sales of toy, collectible and novelty products more than offset an increase in video game sales. Revenues related to toys declined 15%, or \$1.0 million, reflecting, in part, a challenging retail environment for certain toy categories. Revenues from our collectible products declined due to a tough comparison to a successful product launch in the prior year. Revenue from video games, increased by approximately \$0.4 million, led by sales of the *WWE All Stars* video game, which launched in March 2011. Unit shipments of our *SmackDown vs. Raw* video game decreased 51% to 162,000 units as compared to the prior year quarter.
- **Magazine publishing net revenues** were \$2.0 million as compared to \$3.1 million in the prior year quarter, primarily reflecting lower newsstand sales in the current quarter.

Digital Media

Revenues from our Digital Media related businesses were \$8.9 million as compared to \$10.3 million in the prior year, representing a 14% decrease.

- **WWE.com revenues** were \$2.7 million as compared to \$4.5 million in the prior year quarter, primarily reflecting a reduction in online advertising.
- **WWEShop revenues** were \$6.2 million as compared to \$5.8 million in the prior year quarter. This was driven by a 13% increase in average revenue per order to \$52.09, partially offset by a 5% decline in the total number of orders, to approximately 120,000.

WWE Studios

Current year, we recorded revenue of \$4.3 million as compared to \$7.9 million in the prior year quarter, with the decline in revenue driven by the relative performance of our current film releases compared to the prior year quarter releases. Film profits declined \$13.2 million from the prior year quarter due to \$12.2 million in non-cash film impairment charges, primarily driven by lower DVD sales expectations associated with previous releases, *The Reunion*, *See No Evil*, *Knucklehead*, *The Chaperone* and pending releases, *Bending the Rules* and *Barricade*. The decline in film profits also reflected lower receipts from our other films.

Profit Contribution (Net revenues less cost of revenues)

Profit contribution decreased to \$24.3 million in the current year quarter from \$46.8 million in the prior year quarter, reflecting \$12.2 million non-cash film impairment charges and other operating factors. Excluding the impact of the film impairments, Adjusted Profit contribution was \$36.5 million in the current year quarter as compared to \$46.8 million in the prior year quarter, reflecting the absence of television rights fees for our *WWE Superstars* program, a reduction in toy and collectibles licensing revenue, and increased Pay-Per-View production and marketing costs. Gross profit margin decreased to approximately 22% from 38% in the prior year quarter, primarily driven by the performance of our film business. Adjusted profit margins were 32% as compared to 38% in the prior year quarter reflecting lower television and licensing revenues, which have high variable margins, as well as the increase in pay-per-view costs.

Selling, general and administrative expenses

SG&A expenses were \$33.3 million for the current year quarter as compared to \$29.2 million in the prior year quarter, led by increases in staffing related costs, including salary, benefits, and recruitment, as well as higher professional fees, due in part to the potential creation of a WWE Network. Network related expenses were approximately \$4.0 million in the current year quarter.

Depreciation and amortization

Depreciation and amortization expense was \$4.1 million for the current year quarter as compared to \$3.2 million in the prior year quarter.

EBITDA

EBITDA reflected a loss of (\$9.0) million in the current year quarter as compared to a profit of \$17.6 million in the prior year quarter. The EBITDA decline was primarily driven by the change in profit contribution as described above. Adjusted EBITDA (which excludes the film impairment charges and network related expenses in the current year quarter) decreased to \$7.2 million in the current year quarter as compared to \$17.6 million in the prior year quarter, also driven by the change in profit contribution.

Investment and Other (Expense) Income

Investment income was \$0.6 million in the current year quarter as compared to \$0.5 million in the prior year quarter. Other expense was \$0.5 million in the current year quarter as compared to \$0.9 million in the prior year quarter, reflecting foreign exchange losses of \$0.2 million in the current year quarter as compared to foreign exchange loss of \$0.4 million in the prior year quarter.

Effective tax rate

In the current year quarter, the effective tax rate was 35% as compared to 42% in the prior year quarter. The prior year rate was negatively impacted by a \$0.8 million adjustment due to lower than expected deductions for qualified production activities as a result of changes in the tax code in late 2010.

Summary Results for the Year Ended December 31, 2011

Total revenues for the year ended December 31, 2011 were \$483.9 million as compared to \$477.7 million in the prior year. Operating income was \$37.0 million as compared to \$82.3 million in the prior year. Net income was \$24.8 million, or \$0.33 per share, as compared to \$53.5 million, or \$0.71 per share, in the prior year. EBITDA was \$52.0 million for the current year as compared to \$94.0 million in the prior year. Excluding items that impact comparability, Adjusted Operating income for the current year was \$64.4 million as compared to \$82.3 million in the prior year (See Supplemental Information – Schedule of Adjustments). Adjusted Net income was \$43.3 million, or \$0.58 per share, as compared to \$53.5 million, or \$0.71 per share, in the prior year. Adjusted EBITDA was \$79.4 million for the current year as compared to \$94.0 million in the prior year.

The following charts reflect net revenues by segment and by geographical region for the year ended December 31, 2011 and December 31, 2010. (Dollars in millions)

	<u>Net Revenues by Segment</u>	
	Twelve Months Ended	
	December 31,	December 31,
	<u>2011</u>	<u>2010</u>
Live and Televised Entertainment.....	\$ 340.0	\$ 331.8
Consumer Products	94.9	97.4
Digital Media	28.1	28.9
WWE Studios	20.9	19.6
Total	<u>\$ 483.9</u>	<u>\$ 477.7</u>

Revenues increased 1% led by our Live and Televised Entertainment segment primarily reflecting the impact of *WrestleMania*. Growth in Pay-Per-View and Licensing was offset by the absence of two hours of television programming and declines across our other businesses. The decline in Television Advertising reflects a new agreement with a Canadian television distributor. We receive television rights fees rather than advertising revenue under the new agreement.

Net Revenues by Region

	Twelve Months Ended	
	December 31,	December 31,
	<u>2011</u>	<u>2010</u>
North America	\$ 350.5	\$ 342.4
Europe, Middle East & Africa (EMEA).....	76.1	80.3
Asia Pacific (APAC)	38.7	35.6
Latin America	18.6	19.4
Total	<u>\$ 483.9</u>	<u>\$ 477.7</u>

Revenues from North America increased 2% led by higher Pay-Per-View and Licensing revenues reflecting the impact of *WrestleMania* and an additional video game, respectively. This was partially offset by the absence of domestic television rights fees for *NXT* and *Superstars* and lower WWE.com revenues primarily driven by lower advertising sales.

Revenues from outside North America were essentially flat to the prior year as lower sales of licensed toy, collectible and home video products were offset by contractual expansion of television rights fees and increased pay-per-view buy rates, primarily in our Asia Pacific markets. The current year also benefited from a \$3.4 million favorable impact from changes in foreign exchange rates.

Live and Televised Entertainment

Revenues from our Live and Televised Entertainment businesses were \$340.0 million for the current year as compared to \$331.8 million in the prior year, an increase of 2%.

	December 31,	December 31,
	<u>2011</u>	<u>2010</u>
Live Events	\$ 104.7	\$ 104.6
Pay-Per-View	\$ 78.3	\$ 70.2
Venue Merchandise	\$ 18.3	\$ 18.4
Television Rights Fees.....	\$ 131.5	\$ 127.0
Television Advertising	\$ 1.1	\$ 5.9
WWE Classics On Demand	\$ 4.6	\$ 4.6

Consumer Products

Revenues from our Consumer Products businesses were \$94.9 million as compared to \$97.4 million in the prior year, a decrease of 3%.

	December 31, <u>2011</u>	December 31, <u>2010</u>
Home Video	\$ 30.4	\$ 32.1
Licensing	\$ 54.4	\$ 51.7
Magazine Publishing	\$ 7.7	\$ 11.0

Digital Media

Revenues from our Digital Media related businesses were \$28.1 million as compared to \$28.9 million in the prior year, a decrease of 3%.

	December 31, <u>2011</u>	December 31, <u>2010</u>
WWE.com	\$ 12.5	\$ 14.9
WWEShop	\$ 15.6	\$ 14.0

WWE Studios

During the current year, WWE Studios recognized revenue of \$20.9 million as compared to \$19.6 million in the prior year, with the growth in revenue driven by an increase in the number of film releases (four in the current year, namely, *The Chaperone*, *That's What I Am*, *Inside Out* and *The Reunion*, compared to two in the prior year). Lower than anticipated performance of several films contributed to revised ultimate projections for current and pending releases, which resulted in \$23.4 million of impairment charges. Film profits declined \$28.0 million from the prior year driven by the film impairment charges and the increased distribution expenses associated with the higher number of releases under our self-distribution model in the current year as compared to the prior year.

Profit Contribution (Net revenues less cost of revenues)

Profit contribution decreased to \$168.7 million in the current year as compared to \$203.4 million in the prior year primarily driven by the performance of our WWE Studios business and the absence of domestic television rights fees for our *NXT™* and *WWE Superstars* programs. Adjusted Profit contribution (excluding the film impairment charges in the current year) decreased 6% to \$192.1 million from the prior year as increased profits from Live Events and Licensing were more than offset by the absence of the domestic television rights fees as discussed above. Adjusted Profit contribution margin declined to approximately 40% as compared to 43% in the prior year period, primarily reflecting the resulting change in product mix.

Selling, general and administrative expenses

SG&A expenses were \$116.7 million for the current year as compared to \$109.4 million in the prior year. This increase was due in part to network related costs, which were approximately \$4.0 million in the current year. Excluding the network costs, Adjusted SG&A expenses increased 3% to \$112.7 million, as increases in staff related costs, including \$3.0 million in severance expenses, \$2.3 million of higher legal and trademark costs and increased marketing spend were partially offset by an \$8.3 million reduction in management incentive compensation (including stock compensation).

EBITDA

EBITDA for the current year decreased to approximately \$52.0 million as compared to \$94.0 million in the prior year, reflecting lower profit contribution and higher SG&A expenses as described above. Adjusted EBITDA (excluding the film impairment charges and network expenses in the current year) declined to \$79.4 million from \$94.0 million in the prior year.

Investment and Other Income (Expense)

Investment income, net was \$2.1 million as compared to \$2.0 million in the prior year. Other expense of \$1.6 million in the current year as compared to \$2.1 million in the prior year primarily reflects the impact of realized foreign exchange gains and losses and the revaluation of warrants. In the current year, we recorded \$0.4 million of foreign exchange losses as compared to losses of \$1.3 million in the prior year. In the prior year, we recorded a gain of \$0.6 million relating to the revaluation of warrants.

Effective tax rate

The effective tax rate was 33% in the current year as compared to 35% in the prior year. The decrease in our current period tax rate from our anticipated rate of 35% was primarily due to a \$1.6 million benefit relating to qualified domestic production activities. Additionally, rates were positively impacted by the recognition of tax benefits previously unrecognized of \$0.6 million and \$1.3 million for the current year and prior year, respectively. These benefits were primarily a result of the statute of limitations expiring in jurisdictions where the Company had previously taken uncertain tax positions.

Cash Flows

Net cash provided by operating activities was \$63.2 million for the year ended December 31, 2011 as compared to \$39.8 million in the prior year. This increase was primarily driven by a \$37 million reduction in feature film production spending, which was partially offset by the impact of \$15 million in advances received from a licensee in the prior year.

Capital expenditures increased to \$28.0 million in the current year from \$12.3 million in the prior year, primarily due to a \$15.5 million investment in assets to support our effort to create and distribute new content, including through a potential network.

Additional Information

Additional business metrics are made available to investors on a monthly basis on our corporate website – corporate.wwe.com.

Note: WWE will host a conference call on February 23, 2012 at 11:00 a.m. ET to discuss the Company's earnings results for the fourth quarter of 2011. All interested parties can access the conference call by dialing 855-993-1400 (conference ID: WWE). Please reserve a line 15 minutes prior to the start time of the conference call. A presentation that will be referenced during the call can be found at the Company web site at corporate.wwe.com. A replay of the call will be available approximately three hours after the conference call concludes, and can be accessed at corporate.wwe.com.

WWE, a publicly traded company (NYSE: WWE), is an integrated media organization and recognized leader in global entertainment. The company consists of a portfolio of businesses that create and deliver original content 52 weeks a year to a global audience. WWE is committed to family friendly entertainment on its television programming, pay-per-view, digital media and publishing platforms. WWE programming is broadcast in more than 145 countries and 30 languages and reaches more than 500 million homes worldwide. The company is headquartered in Stamford, Conn., with offices in New York, Los Angeles, London, Mumbai, Shanghai, Singapore, Istanbul and Tokyo. Additional information on WWE (NYSE: WWE) can be found at wwe.com and corporate.wwe.com. For information on our global activities, go to <http://www.wwe.com/worldwide/>.

Trademarks: All WWE programming, talent names, images, likenesses, slogans, wrestling moves, trademarks, logos and copyrights are the exclusive property of WWE and its subsidiaries. All other trademarks, logos and copyrights are the property of their respective owners.

Forward-Looking Statements: This news release contains forward-looking statements pursuant to the safe harbor provisions of the Securities Litigation Reform Act of 1995, which are subject to various risks and uncertainties. These risks and uncertainties include, without limitation, risks relating to maintaining and renewing key agreements, including television and pay-per-view programming distribution agreements; the need for continually developing creative and entertaining programming; the continued importance of key performers and the services of Vincent McMahon; the conditions of the markets in which we compete and acceptance of the Company's brands, media and merchandise within those markets; our exposure to bad debt risk; uncertainties relating to regulatory and litigation matters; risks resulting from the highly competitive nature of our markets; uncertainties associated with international markets; the importance of protecting our intellectual property and complying with the intellectual property rights of others; risks associated with producing and travelling to and from our large live events, both domestically and internationally; the risk of accidents or injuries during our physically demanding events; risks relating to our film business; risks relating to increasing content production for distribution on various platforms, including the potential creation of a WWE network; risks relating to our computer systems and online operations; risks relating to the large number of shares of common stock controlled by members of the McMahon family and the possibility of the sale of their stock by the McMahons or the perception of the possibility of such sales; the relatively small public float of our stock; and other risks and factors set forth from time to time in Company filings with the Securities and Exchange Commission. Actual results could differ materially from those currently expected or anticipated. In addition, our dividend is dependent on a number of factors, including, among other things, our liquidity and historical and projected cash flow, strategic plan (including alternative uses of capital), our financial results and condition, contractual and legal restrictions on the payment of dividends, general economic and competitive conditions and such other factors as our Board of Directors may consider relevant.

WWE
Consolidated Income Statements
(in thousands, except per share data)
(Unaudited)

	Three Months Ended		Twelve Months Ended	
	Dec. 31, 2011	Dec. 31, 2010	Dec. 31, 2011	Dec. 31, 2010
Net revenues	\$ 112,942	\$122,524	\$ 483,921	\$ 477,655
Cost of revenues	88,652	75,756	315,183	274,298
Selling, general and administrative expenses	33,254	29,108	116,739	109,392
Depreciation and amortization	4,108	3,246	14,980	11,707
Operating (loss) income	(13,072)	14,414	37,019	82,258
Investment income, net	596	543	2,054	2,047
Interest expense	(377)	(58)	(623)	(260)
Other expense, net	(487)	(932)	(1,569)	(2,105)
(Loss) income before income taxes	(13,340)	13,967	36,881	81,940
(Benefit) provision for income taxes	(4,711)	5,840	12,049	28,488
Net (loss) income	<u>(\$ 8,629)</u>	<u>\$ 8,127</u>	<u>\$ 24,832</u>	<u>\$ 53,452</u>
(Loss) earnings per share:				
Basic	<u>(\$ 0.12)</u>	<u>\$ 0.11</u>	<u>\$ 0.33</u>	<u>\$ 0.72</u>
Diluted	<u>(\$ 0.12)</u>	<u>\$ 0.11</u>	<u>\$ 0.33</u>	<u>\$ 0.71</u>
Weighted average common shares outstanding:				
Basic	<u>74,418</u>	<u>74,957</u>	<u>74,212</u>	<u>74,570</u>
Diluted	<u>74,763</u>	<u>75,406</u>	<u>74,858</u>	<u>75,306</u>

WWE
Consolidated Balance Sheets
(in thousands)
(Unaudited)

	As of Dec. 31, 2011	As of Dec. 31, 2010
ASSETS		
CURRENT ASSETS:		
Cash and cash equivalents	\$ 52,491	\$ 69,823
Short-term investments	103,270	97,124
Accounts receivable, net	56,741	52,051
Inventory	1,658	2,087
Deferred income tax assets	11,122	17,128
Prepaid expenses and other current assets	14,461	20,856
Total current assets	<u>239,743</u>	<u>259,069</u>
PROPERTY AND EQUIPMENT, NET	96,562	80,995
FEATURE FILM PRODUCTION ASSETS, NET	23,591	56,253
INVESTMENT SECURITIES	10,156	15,037
OTHER ASSETS	<u>8,572</u>	<u>4,375</u>
TOTAL ASSETS	<u>\$ 378,624</u>	<u>\$ 415,729</u>
LIABILITIES AND STOCKHOLDERS' EQUITY		
CURRENT LIABILITIES:		
Current portion of long-term debt	\$ 1,262	\$ 1,169
Accounts payable	15,897	18,441
Accrued expenses and other liabilities	30,386	24,478
Deferred income	21,709	28,323
Total current liabilities	<u>69,254</u>	<u>72,411</u>
LONG-TERM DEBT	359	1,621
NON-CURRENT TAX LIABILITIES	5,634	15,068
NON-CURRENT DEFERRED INCOME	8,234	9,881
STOCKHOLDERS' EQUITY:		
Class A common stock	283	275
Class B common stock	462	465
Additional paid-in capital	338,414	336,592
Accumulated other comprehensive income	3,262	3,144
Accumulated deficit	(47,278)	(23,728)
Total stockholders' equity	<u>295,143</u>	<u>316,748</u>
TOTAL LIABILITIES AND STOCKHOLDERS' EQUITY	<u>\$ 378,624</u>	<u>\$ 415,729</u>

WWE
Consolidated Statements of Cash Flows
(in thousands)
(Unaudited)

	Twelve Months Ended	
	Dec. 31, 2011	Dec. 31, 2010
OPERATING ACTIVITIES:		
Net income	\$ 24,832	\$ 53,452
Adjustments to reconcile net income to net cash provided by operating activities:		
Amortization and impairments of feature film production assets	39,742	13,000
Revaluation of warrants	-	(610)
Depreciation and amortization	14,980	11,707
Realized gain on sale of investments	(142)	(53)
Amortization of bond premium	2,580	1,827
Amortization of debt issuance costs	205	-
Stock compensation costs	2,868	7,579
(Recovery) provision for doubtful accounts	(692)	774
Loss on disposal of property and equipment	1,376	-
Benefit from deferred income taxes	(6,424)	(2,410)
Excess tax benefit from stock-based payment arrangements	(122)	(2,758)
Changes in assets and liabilities:		
Accounts receivable	(1,915)	9,908
Inventory	429	95
Prepaid expenses and other current assets	4,770	(14,645)
Feature film production assets	(7,097)	(32,535)
Accounts payable	(2,544)	(2,841)
Accrued expenses and other liabilities	(1,399)	(14,760)
Deferred income	(8,261)	12,074
Net cash provided by operating activities	<u>63,186</u>	<u>39,804</u>
INVESTING ACTIVITIES:		
Purchase of property and equipment and other assets	(27,956)	(12,314)
Proceeds from infrastructure incentives	-	4,130
Purchase of short-term investments	(47,904)	(96,751)
Proceeds from sales or maturities of investments	45,148	64,553
Net cash used in investing activities	<u>(30,712)</u>	<u>(40,382)</u>
FINANCING ACTIVITIES:		
Repayments of long-term debt	(1,169)	(1,082)
Debt issuance costs	(1,843)	-
Dividends paid	(47,809)	(83,643)
Issuance of stock, net	893	1,022
Proceeds from exercise of stock options	-	1,562
Excess tax benefit from stock-based payment arrangements	122	2,758
Net cash used in financing activities	<u>(49,806)</u>	<u>(79,383)</u>
NET DECREASE IN CASH AND CASH EQUIVALENTS	(17,332)	(79,961)
CASH AND CASH EQUIVALENTS, BEGINNING OF PERIOD	69,823	149,784
CASH AND CASH EQUIVALENTS, END OF PERIOD	<u>\$ 52,491</u>	<u>\$ 69,823</u>

WWE
Supplemental Information - EBITDA
(in thousands)
(Unaudited)

	Three Months Ended		Twelve Months Ended	
	Dec. 31, 2011	Dec. 31, 2010	Dec. 31, 2011	Dec. 31, 2010
Net (loss) income reported on U.S. GAAP basis	(\$ 8,629)	\$ 8,127	\$ 24,832	\$ 53,452
(Benefit) provision for income taxes	(4,711)	5,840	12,049	28,488
Investment, interest and other expense (income), net	267	447	138	318
Depreciation and amortization	4,108	3,246	14,980	11,707
EBITDA	<u>(\$ 8,965)</u>	<u>\$ 17,660</u>	<u>\$ 51,999</u>	<u>\$ 93,965</u>

Non-GAAP Measure:

EBITDA is defined as net income before investment, interest and other expense/income, income taxes, depreciation and amortization. The Company's definition of EBITDA does not adjust its U.S. GAAP basis earnings for the amortization of Feature Film production assets. Although it is not a recognized measure of performance under U.S. GAAP, EBITDA is presented because it is a widely accepted financial indicator of a company's performance. The Company uses EBITDA to measure its own performance and to set goals for operating managers. EBITDA should not be considered as an alternative to net income, cash flows from operations or any other indicator of WWE's performance or liquidity, determined in accordance with U.S. GAAP.

WWE
Supplemental Information – Schedule of Adjustments
(in millions)
(Unaudited)

	Three Months Ended Dec. 31, 2011	Dec. 31, 2010	Twelve Months Ended Dec. 31, 2011	Dec. 31, 2010
Profit contribution.....	\$ 24.3	\$ 46.8	\$ 168.7	\$ 203.4
Adjustments (Added back):				
Film impairments.....	12.2	-	23.4	-
Adjusted Profit contribution.....	\$ 36.5	\$ 46.8	\$ 192.1	\$ 203.4
Selling, general and administrative expenses.....	33.3	29.2	116.7	109.4
Adjustments (Added back):				
Network related expenses.....	(4.0)	-	(4.0)	-
Adjusted Selling, general and administrative expenses.....	\$ 29.3	\$ 29.2	\$ 112.7	\$ 109.4
Depreciation and amortization.....	4.1	3.2	15.0	11.7
Operating (loss) income.....	(\$ 13.1)	\$ 14.4	\$ 37.0	\$ 82.3
Adjusted Operating income.....	\$ 3.1	\$ 14.4	\$ 64.4	\$ 82.3
EBITDA.....	(\$ 9.0)	\$ 17.6	\$ 52.0	\$ 94.0
Adjusted EBITDA.....	\$ 7.2	\$ 17.6	\$ 79.4	\$ 94.0

Non-GAAP Measure:

Adjusted Profit contribution, Adjusted Operating income, Selling, general and administrative expenses and Adjusted EBITDA exclude certain material items, which otherwise would impact the comparability of results between periods. These should not be considered as an alternative to net income, cash flows from operations or any other indicator of WWE's performance or liquidity, determined in accordance with U.S. GAAP.

WWE
Supplemental Information – Schedule of Adjustments
(in millions, except per share data)
(Unaudited)

	Three Months Ended		Twelve Months Ended	
	Dec. 31, 2011	Dec. 31, 2010	Dec. 31, 2011	Dec. 31, 2010
Operating (loss) income.....	(\$ 13.1)	\$ 14.4	\$ 37.0	\$ 82.3
Adjustments (Added back):				
Film impairments	12.2	-	23.4	-
Network related expenses	4.0	-	4.0	-
Adjusted Operating income	\$ 3.1	\$ 14.4	\$ 64.4	\$ 82.3
Investment, interest and other (expense) income, net	(0.3)	(0.5)	(0.1)	(0.4)
Adjusted Income before taxes	\$ 2.8	\$ 13.9	\$ 64.3	\$ 81.9
Adjusted (Benefit) provision for taxes.....	(1.0)	(5.8)	(21.0)	(28.4)
Adjusted Net income	\$ 1.8	\$ 8.1	\$ 43.3	\$53.5
Adjusted Earnings per share:				
Basic	\$ 0.02	\$ 0.11	\$ 0.58	\$ 0.72
Diluted.....	\$ 0.02	\$ 0.11	\$ 0.58	\$ 0.71
Weighted average common shares outstanding:				
Basic	74,418	74,957	74,212	74,570
Diluted.....	74,763	75,406	74,858	75,306

Non-GAAP Measure:

Adjusted Operating income, Adjusted Net income and Adjusted Earnings per share exclude certain material items, which otherwise would impact the comparability of results between periods. These should not be considered as an alternative to net income, cash flows from operations or any other indicator of WWE's performance or liquidity, determined in accordance with U.S. GAAP.

WWE
Supplemental Information- Free Cash Flow
(in thousands)
(Unaudited)

	Three Months Ended		Twelve Months Ended	
	Dec. 31, 2011	Dec. 31, 2010	Dec. 31, 2011	Dec. 31, 2010
Net cash provided by operating activities	\$ 15,381	\$ 11,896	\$ 63,186	\$ 39,804
Less cash used in capital expenditures:				
Purchase of property and equipment.....	(17,479)	(3,184)	(26,162)	(12,254)
Proceeds from infrastructure incentives	-	-	-	4,130
Purchase of other assets	(11)	-	(1,794)	(60)
Free Cash Flow.....	<u>(\$ 2,109)</u>	<u>\$ 8,712</u>	<u>\$ 35,230</u>	<u>\$ 31,620</u>

Non-GAAP Measure:

We define Free Cash Flow as net cash provided by operating activities less cash used for capital expenditures. Although it is not a recognized measure of liquidity under U.S. GAAP, Free Cash Flow provides useful information regarding the amount of cash our continuing business is generating after capital expenditures, available for reinvesting in the business and for payment of dividends.

EXHIBIT 2

Intellectual property (IP) refers to creations of the mind, such as inventions; literary and artistic works; designs; and symbols, names and images used in commerce.

IP is protected in law by, for example, patents, copyright and trademarks, which enable people to earn recognition or financial benefit from what they invent or create. By striking the right balance between the interests of innovators and the wider public interest, the IP system aims to foster an environment in which creativity and innovation can flourish.

Albert Patterson feels that his mark was infringed upon. The WWA Superstars of Wrestling mark identifies with the WWE Superstars mark. WWA's mark holds precedent over the WWE mark, and restitution is being sought.

ARGUMENT

- Precedence
- Confusion
- Fair Use

Precedence is the condition of being considered more important than someone or something else; priority in importance, orders, or rank.

Albert Patterson's mark was registered in the patent office nearly 40 years ago. At this point in time, WWE (Titan Sports, WWF/E, etc.) Had yet to change their name, and was still considered the WWWF. The WWWF belonged to Vince McMahon Sr. Once Vince McMahon Jr acquired the organization, he then changed the name. However, the means that Mr. McMahon changed the mark isn't justifiable. Albert Patterson can attest that his mark has precedence over the WWE mark.

Likelihood of Confusion In the ex parte examination of a trademark application, a refusal under §2(d) is normally based on the examining attorney's conclusion that the applicant's mark, as used on or in connection with the specified goods or services, so resembles a registered mark as to be likely to cause confusion. (See TMEP §1207.02 concerning §2(d) refusals to register marks that so resemble another mark as to be likely to deceive, and TMEP §1207.03 concerning §2(d) refusals based on unregistered marks. Note: Refusals based on unregistered marks are not issued in ex parte examination.)

The examining attorney must conduct a search of Office records to determine whether the applicant's mark so resembles any registered mark(s) as to be likely to cause confusion or mistake, when used on or in connection with the goods or services identified in the application. The examining attorney also searches pending applications for conflicting marks with earlier effective filing dates. See TMEP §§1208 et seq. regarding conflicting marks. The examining attorney must place a copy of the search strategy in the file.

If the examining attorney determines that there is a likelihood of confusion between applicant's mark and a previously registered mark, the examining attorney refuses registration under §2(d). Before citing a registration, the examining attorney must check the automated records of the Office to confirm that any registration that is the basis for a §2(d) refusal is an active registration. See TMEP §716.02(e) regarding suspension pending cancellation of a cited registration under §8 of the Act or expiration of a cited registration for failure to renew under §9 of the Act.

Also, if Office records indicate that an assignment of the conflicting registration has been recorded, the examining attorney should check the automated records of the Assignment Services Division of the Office to determine whether the conflicting mark has been assigned to applicant.

In *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (C.C.P.A. 1973), the Court of Customs and Patent Appeals discussed the factors relevant to a determination of likelihood of confusion. In *ex parte* examination, the issue of likelihood of confusion typically revolves around the similarity or dissimilarity of the marks and the relatedness of the goods or services. The other factors listed in *du Pont* may be considered only if relevant evidence is contained in the record. See *In re Majestic Distilling Co.*, 315 F.3d 1311, 1315, 65 USPQ2d 1201, 1204 (Fed. Cir. 2003) ("Not all of the DuPont factors may be relevant or of equal weight in a given case, and 'any one of the factors may control a particular case,'" quoting *In re Dixie Restaurants, Inc.*, 105 F.3d 1405, 1406-07, 41 USPQ2d 1531, 1533 (Fed. Cir. 1997)); *In re National Novice Hockey League, Inc.*, 222 USPQ 638, 640 (TTAB 1984). In an *ex parte* case, the following factors are usually the most relevant:

- The similarity or dissimilarity of the marks in their entireties as to appearance, sound, connotation and commercial impression.
- The relatedness of the goods or services as described in an application or registration or in connection with which a prior mark is in use.
- The similarity or dissimilarity of established, likely-to-continue trade channels.
- The conditions under which and buyers to whom sales are made, i.e. "impulse" vs. careful, sophisticated purchasing.
- The number and nature of similar marks in use on similar goods.
- A valid consent agreement between the applicant and the owner of the previously registered mark.

The Court of Appeals for the Federal Circuit has provided the following guidance with regard to determining and articulating likelihood of confusion:

The basic principle in determining confusion between marks is that marks must be compared in their entireties and must be considered in connection with the particular goods or services for which they are used (citations omitted). It follows from that principle that likelihood of confusion cannot be predicated on dissection of a mark, that is, on only part of a mark (footnote omitted). On the other hand, in articulating reasons for reaching a conclusion on the issue of confusion, there is nothing improper in stating that, for rational reasons, more or less weight has been given to a particular feature of a mark, provided the ultimate conclusion rests on consideration of the marks in their entireties (footnote omitted). Indeed, this type of analysis appears to be unavoidable.

In re National Data Corp., 753 F.2d 1056, 1058, 224 USPQ 749, 750-51 (Fed. Cir. 1985).

There is no mechanical test for determining likelihood of confusion. The issue is not whether the actual goods are likely to be confused but, rather, whether there is a likelihood of confusion as to the source of the goods. In re Shell Oil Co., 992 F.2d 1204, 1208, 26 USPQ2d 1687, 1690 (Fed. Cir. 1993), and cases cited therein. Each case must be decided on its own facts.

The determination of likelihood of confusion under §2(d) in an intent-to-use application does not differ from the determination in any other type of application.

1207.01(a) Relatedness of the Goods or Services

If the marks of the respective parties are identical, the relationship between the goods or services need not be as close to support a finding of likelihood of confusion as would be required in a case where there are differences between the marks. *Amcor, Inc. v. Amcor Industries, Inc.*, 210 USPQ 70, 78 (TTAB 1981).

In some instances, because of established marketing practices, the use of identical marks on seemingly unrelated goods and services could result in a likelihood of confusion. See *In re Phillips-Van Heusen Corporation*, 228 USPQ 949, 951 (TTAB 1986) ("The licensing of commercial trademarks for use on 'collateral' products (such as clothing, glassware, linens, etc.), that are unrelated in nature to those goods or services on which the marks are normally used, has become a common practice in recent years.")

1207.01(a)(i) Goods or Services Need Not Be Identical

The goods or services do not have to be identical or even competitive in order to determine that there is a likelihood of confusion. The inquiry is whether the goods are related, not identical. The

issue is not whether the goods will be confused with each other, but rather whether the public will be confused about their source. See *Safety-Kleen Corp. v. Dresser Indus., Inc.*, 518 F.2d 1399, 1404, 186 USPQ 476, 480 (C.C.P.A. 1975). It is sufficient that the goods or services of the applicant and the registrant are so related that the circumstances surrounding their marketing are such that they are likely to be encountered by the same persons under circumstances that would give rise to the mistaken belief that they originate from the same source. See, e.g., *On-line Careline Inc. v. America Online Inc.*, 229 F.3d 1080, 56 USPQ2d 1471 (Fed. Cir. 2000) (ON-LINE TODAY for Internet connection services held likely to be confused with ONLINE TODAY for Internet content); *In re Martin's Famous Pastry Shoppe, Inc.*, 748 F.2d 1565, 223 USPQ 1289 (Fed. Cir. 1984) (MARTIN'S for wheat bran and honey bread held likely to be confused with MARTIN'S for cheese); *In re Corning Glass Works*, 229 USPQ 65 (TTAB 1985) (CONFIRM for a buffered solution equilibrated to yield predetermined dissolved gas values in a blood gas analyzer held likely to be confused with CONFIRMCELLS for diagnostic blood reagents for laboratory use); *In re Jeep Corp.*, 222 USPQ 333 (TTAB 1984) (LAREDO for land vehicles and structural parts therefor held likely to be confused with LAREDO for pneumatic tires).

Conversely, if the goods or services in question are not related or marketed in such a way that they would be encountered by the same persons in situations that would create the incorrect assumption that they originate from the same source, then, even if the marks are identical, confusion is not likely. See, e.g., *Shen Manufacturing Co. v. Ritz Hotel Ltd.*, 393 F.3d 1238, 73 USPQ2d 1350 (Fed. Cir. 2004) (cooking classes and kitchen textiles not related); *Local Trademarks, Inc. v. Handy Boys Inc.*, 16 USPQ2d 1156 (TTAB 1990) (LITTLE PLUMBER for liquid drain opener held not confusingly similar to LITTLE PLUMBER and design for

advertising services, namely the formulation and preparation of advertising copy and literature in the plumbing field); *Quartz Radiation Corp. v. Comm/Scope Co.*, 1 USPQ2d 1668 (TTAB 1986) (QR for coaxial cable held not confusingly similar to QR for various products (e.g., lamps, tubes) related to the photocopying field).

1207.01(a)(ii) Goods May Be Related to Services

It is well recognized that confusion is likely to occur from the use of the same or similar marks for goods, on the one hand, and for services involving those goods, on the other. See, e.g., *In re Hyper Shoppes (Ohio) Inc.*, 837 F.2d 463, 6 USPQ2d 1025 (Fed. Cir. 1988) (BIGG'S (stylized) for retail grocery and general merchandise store services held likely to be confused with BIGGS and design for furniture); *In re H.J. Seiler Co.*, 289 F.2d 674, 129 USPQ 347 (C.C.P.A. 1961) (SEILER for catering services held likely to be confused with SEILER'S for smoked and cured meats); *In re U.S. Shoe Corp.*, 229 USPQ 707 (TTAB 1985) (CAREER IMAGE (stylized) for retail women's clothing store services and clothing held likely to be confused with CREST CAREER IMAGES (stylized) for uniforms); *In re United Service Distributors, Inc.*, 229 USPQ 237 (TTAB 1986) (design for distributorship services in the field of health and beauty aids held likely to be confused with design for skin cream); *In re Phillips-Van Heusen Corp.*, 228 USPQ 949 (TTAB 1986) (21 CLUB for various items of men's, boys', girls' and women's clothing held likely to be confused with THE "21" CLUB (stylized) for restaurant services and towels); *Steelcase Inc. v. Steelcare Inc.*, 219 USPQ 433 (TTAB 1983) (STEELCARE INC. for refinishing of furniture, office furniture, and machinery held likely to be confused with STEELCASE for office furniture and accessories); *Corinthian Broadcasting Corporation v. Nippon Electric Co., Ltd.*, 219 USPQ 733 (TTAB 1983) (TVS for transmitters and receivers of still television pictures held likely to be confused with TVS for television broadcasting services); *In re Industrial*

Expositions, Inc., 194 USPQ 456 (TTAB 1977) (POLLUTION ENGINEERING EXPOSITION for programming and conducting of industrial trade shows held likely to be confused with POLLUTION ENGINEERING for a periodical magazine).

1207.01(a)(ii)(A) Food and Beverage Products Versus Restaurant Services

While likelihood of confusion has often been found in situations where similar marks are used in connection with both food or beverage products and restaurant services, there is no per se rule to this effect. To establish likelihood of confusion, a party must show "something more than that similar or even identical marks are used for food products and for restaurant services." In re Coors Brewing Co., 343 F.3d 1340, 1345, 68 USPQ2d 1059, 1063 (Fed. Cir. 2003) (no likelihood of confusion between applicant's BLUE MOON and design for beer and the registered mark BLUE MOON and design for restaurant services); *Jacobs v. International Multifoods Corp.*, 668 F.2d 1234, 1236, 212 USPQ 641, 642 (C.C.P.A. 1982) (no likelihood of confusion between BOSTON SEA PARTY for restaurant services and BOSTON TEA PARTY for tea).

The determination of the relatedness of the goods and services is based on the evidence provided by the applicant and the examining attorney. In *Coors*, the examining attorney introduced evidence from several sources discussing the practice of some restaurants to offer private label or house brands of beer; evidence that brewpubs who brew their own beer often feature restaurant services; and copies of third-party registrations showing that a single mark had been registered for beer and restaurants services. However, applicant countered with evidence that while there are about 1,450 brewpubs and microbreweries in the United States, there are over 800,000 restaurants, which means that brewpubs and microbreweries account for only about 18 one-

hundredths of one percent of all restaurants. Noting that "[t]here was no contrary evidence introduced on those points," the court found that:

While there was evidence that some restaurants sell private label beer, that evidence did not suggest that such restaurants are numerous. And although the Board had before it a few registrations for both restaurant services and beer, the very small number of such dual use registrations does nothing to counter Coors' showing that only a very small percentage of restaurants actually brew their own beer or sell house brands of beer; instead, the small number of such registrations suggests that it is quite uncommon for restaurants and beer to share the same trademark. Thus, the evidence before the Board indicates not that there is a substantial overlap between restaurant services and beer with respect to source, but rather that the degree of overlap between the sources of restaurant services and the sources of beer is de minimis. We therefore disagree with the Board's legal conclusion that Coors' beer and the registrant's restaurant services are sufficiently related to support a finding of a likelihood of confusion.

343 F.3d at 1340, 68 USPQ2d at 1063-1064.

See also *Lloyd's Food Products, Inc. v. Eli's, Inc.*, 987 F.2d 766, 25 USPQ2d 2027 (Fed. Cir. 1993) (Board erred in failing to consider evidence of third party use of service marks in telephone directories); *In re Opus One Inc.*, 60 USPQ2d 1812 (TTAB 2001) (likelihood of confusion between OPUS ONE used on both wine and restaurant services, where the evidence showed that it is common in the industry for restaurants to offer and sell private label wines named after the restaurant, and that registrant's wines were actually served at applicant's restaurant); *In re Comexa Ltda.*, 60 USPQ2d 1118, 1123 (TTAB 2001) (likelihood of confusion between AMAZON for restaurant services and AMAZON and design for chili sauce and pepper

sauce, where 50 third-party registrations (48 based on use) showing registration of the same mark for sauces and restaurant services were probative to the extent that they served to suggest that the goods and services were of a kind that may emanate from a single source); In re Azteca Restaurant Enterprises, Inc., 50 USPQ2d 1209, 1211 (TTAB 1999) (likelihood of confusion between AZTECA MEXICAN RESTAURANT for restaurant services held likely to be confused with AZTECA for tortillas, taco shells and salsa, where the evidence indicated that the goods at issue were "Mexican food items" of a type that were "often principal items of entrees served by Mexican restaurants"); In re Golden Griddle Pancake House Ltd., 17 USPQ2d 1074 (TTAB 1990) (likelihood of confusion between GOLDEN GRIDDLE for table syrup and GOLDEN GRIDDLE PANCAKE HOUSE for restaurant that serves pancakes and syrup); In re Mucky Duck Mustard Co. Inc., 6 USPQ2d 1467, 1469 (TTAB 1988), *aff'd*, 864 F.2d 149 (Fed. Cir. 1988) (likelihood of confusion between MUCKY DUCK and duck design for mustard and THE MUCKY DUCK and duck design for restaurant services, the Board finding that "[a]lthough these goods and services obviously differ, mustard is . a condiment which is commonly utilized in restaurants by their patrons, especially in such restaurants as delicatessens, fast food houses, steak houses, taverns, inns, and the like, and we think it is common knowledge that restaurants sometimes market their house specialties, including items such as salad dressings, through retail outlets"); *Steve's Ice Cream v. Steve's Famous Hot Dogs*, 3 USPQ2d 1477, 1478 (TTAB 1987) (no likelihood of confusion between STEVE'S for ice cream and STEVE'S for restaurant featuring hot dogs, where the marks differed and "there [was] no evidence in the record before us that applicant makes or sells ice cream, or that any one business makes and sells ice cream under the same mark in connection with which it renders restaurant services").

1207.01(a)(iii) Reliance on Identification of Goods/Services in Registration and Application

The nature and scope of a party's goods or services must be determined on the basis of the goods or services recited in the application or registration. See, e.g., *Hewlett-Packard Co. v. Packard Press Inc.*, 281 F.3d 1261, 62 USPQ2d 1001 (Fed. Cir. 2002); *In re Shell Oil Co.*, 992 F.2d 1204, 26 USPQ2d 1687, 1690 n. 4 (Fed. Cir. 1993); *J & J Snack Foods Corp. v. McDonald's Corp.*, 932 F.2d 1460, 18 USPQ2d 1889 (Fed. Cir. 1991); *Octocom Systems Inc. v. Houston Computer Services Inc.*, 918 F.2d 937, 16 USPQ2d 1783 (Fed. Cir. 1990); *Canadian Imperial Bank of Commerce, N.A. v. Wells Fargo Bank*, 811 F.2d 1490, 1 USPQ2d 1813 (Fed. Cir. 1987); *Paula Payne Products Co. v. Johnson Publishing Co.*, 473 F.2d 901, 177 USPQ 76 (C.C.P.A. 1973).

If the cited registration describes goods or services broadly, and there is no limitation as to the nature, type, channels of trade or class of purchasers, it is presumed that the registration encompasses all goods or services of the type described, that they move in all normal channels of trade, and that they are available to all classes of purchasers. Therefore, if the cited registration has a broad identification of goods or services, an applicant does not avoid likelihood of confusion merely by more narrowly identifying its related goods. See, e.g., *In re Linkvest S.A.*, 24 USPQ2d 1716 (TTAB 1992) (where a registrant's goods are broadly identified as "computer programs recorded on magnetic disks," without any limitation as to the kind of programs or the field of use, it is necessary to assume that the registrant's goods encompass all such computer programs, and that they travel in the same channels of trade and are available to all classes of prospective purchasers of those goods); *In re Diet Center Inc.*, 4 USPQ2d 1975 (TTAB 1987) (VEGETABLE SVELTES for wheat crackers sold through franchised outlets offering weight reduction services held likely to be confused with SVELTE for low calorie frozen dessert); *In re Uncle Sam Chemical Co., Inc.*, 229 USPQ 233 (TTAB 1986) (SPRAYZON for cleaning

preparations and degreasers for industrial and institutional use held likely to be confused with SPRA-ON and design for preparation for cleaning woodwork and furniture). Similarly, there is a likelihood of confusion if an applicant identifies its goods or services so broadly that the identification encompasses the goods or services identified in the registration of a similar mark. See, e.g., *In re Americor Health Services*, 1 USPQ2d 1670 (TTAB 1986) (RESOLVE for corporate employee assistance services, namely, providing confidential mental health counseling services, held likely to be confused with RESOLVE for counseling services in the field of infertility); *In re Equitable Bancorporation*, 229 USPQ 709 (TTAB 1986) (RESPONSE for banking services held likely to be confused with RESPONSE CARD for banking services rendered through 24-hour teller machines).

An applicant may not restrict the scope of its goods and/or the scope of the goods covered in the registration by extrinsic argument or evidence, for example, as to the quality or price of the goods. See, e.g., *In re Bercut-Vandervoort & Co.*, 229 USPQ 763, 764 (TTAB 1986).

Where the terminology in the identification is unclear, the Trademark Trial and Appeal Board has permitted an applicant to provide extrinsic evidence to show that the registrant's identification has a specific meaning to members of the trade. The Board noted that in light of such evidence it is improper to consider the identification in a vacuum and attach all possible interpretations to it. *In re Trackmobile Inc.*, 15 USPQ2d 1152, 1154 (TTAB 1990).

1207.01(a)(iv) No "Per Se" Rule

The facts in each case vary and the weight to be given each factor may be different in light of the varying circumstances; therefore, there can be no rule that certain goods or services are per se related, such that there must be a likelihood of confusion from the use of similar marks in

relation thereto. See, e.g., *Information Resources Inc. v. X*Press Information Services*, 6 USPQ2d 1034, 1038 (TTAB 1988) (regarding computer hardware and software); *Hi-Country Foods Corp. v. Hi Country Beef Jerky*, 4 USPQ2d 1169, 1171 (TTAB 1987) (regarding food products); *In re Quadram Corp.*, 228 USPQ 863, 865 (TTAB 1985) (regarding computer hardware and software); *In re British Bulldog, Ltd.*, 224 USPQ 854, 855-56 (TTAB 1984) and cases cited therein (regarding clothing).

1207.01(a)(v) Expansion of Trade Doctrine

The examining attorney must consider any goods or services in the registrant's normal fields of expansion to determine whether the registrant's goods or services are related to the applicant's identified goods or services under §2(d). *In re General Motors Corp.*, 196 USPQ 574 (TTAB 1977). A trademark owner is entitled to protection against the registration of a similar mark on products that might reasonably be expected to be produced by him in the normal expansion of his business. The test is whether purchasers would believe the product or service is within the registrant's logical zone of expansion. *CPG Products Corp. v. Perceptual Play, Inc.*, 221 USPQ 88 (TTAB 1983).

1207.01(a)(vi) Evidence Showing Relatedness of Goods or Services

The examining attorney must provide evidence showing that the goods and services are related to support a finding of likelihood of confusion. Evidence of relatedness might include news articles and/or evidence from computer databases showing that the relevant goods or services are used together or used by the same purchasers; advertisements showing that the relevant goods or services are advertised together or sold by the same manufacturer or dealer; or copies of prior use-based registrations of the same mark for both applicant's goods and services and the goods

and services listed in the cited registration. See TMEP §1207.01(d)(iii) and cases cited therein regarding the probative value of third-party registrations.

The identification of goods/services in the subject application and the cited registration(s) may in itself constitute evidence of the relatedness of the goods or services. *Hewlett-Packard Co. v. Packard Press Inc.*, 281 F.3d 1261, 1267, 62 USPQ2d 1001, 1004 (Fed. Cir. 2002) (Board erred in finding that there was insufficient evidence of relatedness, "because the Board did not consider the important evidence already before it, namely the ITU application and [opposer's multiple] registrations").

1207.01(b) Similarity of the Marks

If it appears that confusion may be likely as a result of the contemporaneous use of similar marks by the registrant and the applicant with the identified goods or services, the next step is to evaluate the marks themselves, in relation to the goods and services. Under *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 1361, 177 USPQ 563, 567 (C.C.P.A. 1973), the first factor requires examination of "the similarity or dissimilarity of the marks in their entireties as to appearance, sound, connotation and commercial impression." The test of likelihood of confusion is not whether the marks can be distinguished when subjected to a side-by-side comparison, but whether the marks are sufficiently similar that there is a likelihood of confusion as to the source of the goods or services. When considering the similarity of the marks, "[a]ll relevant facts pertaining to the appearance and connotation must be considered." *Recot, Inc. v. M.C. Becton*, 214 F.3d 1322, 1329, 54 USPQ2d 1894, 1897 (Fed. Cir. 2000). In evaluating the similarities between marks, the emphasis must be on the recollection of the average purchaser who normally

retains a general, rather than specific, impression of trademarks. *Sealed Air Corp. v. Scott Paper Co.*, 190 USPQ 106, 108 (TTAB 1975).

Where the goods are identical, "the degree of similarity [between the marks] necessary to support a conclusion of likely confusion declines." *Century 21 Real Estate Corp. v. Century Life of America*, 970 F.2d 874, 877, 23 USPQ2d 1698, 1701 (Fed. Cir. 1992), cert. denied 506 U.S. 1034 (1992); *ECI Division of E-Systems, Inc. v. Environmental Communications Inc.*, 207 USPQ 443 (TTAB 1980).

1207.01(b)(i) Word Marks

The points of comparison for a word mark are appearance, sound, meaning, and commercial impression. *Palm Bay Imports, Inc. v. Veuve Clicquot Ponsardin Maison Fondée en 1772*, 396 F.3d 1369, 73 USPQ2d 1689, 1691 (Fed. Cir. 2005), citing *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 1361, 177 USPQ 563, 567 (C.C.P.A. 1973). Similarity of the marks in one respect -- sight, sound or meaning -- will not automatically result in a finding of likelihood of confusion even if the goods are identical or closely related. Rather, the rule is that taking into account all of the relevant facts of a particular case, similarity as to one factor alone may be sufficient to support a holding that the marks are confusingly similar. *In re Lamson Oil Co.*, 6 USPQ2d 1041, 1043 (TTAB 1987).

1207.01(b)(ii) Similarity In Appearance

Similarity in appearance is one factor in determining whether there is a likelihood of confusion between marks. Marks may be confusingly similar in appearance despite the addition, deletion or substitution of letters or words. See, e.g., *Weiss Associates Inc. v. HRL Associates, Inc.*, 902 F.2d 1546, 14 USPQ2d 1840 (Fed. Cir. 1990) (TMM held confusingly similar to TMS, both for

systems software); *Canadian Imperial Bank of Commerce, N.A., v. Wells Fargo Bank*, 811 F.2d 1490, 1 USPQ2d 1813 (Fed. Cir. 1987) (COMMCASH held likely to be confused with COMMUNICASH, both for banking services); *In re Lamson Oil Co.*, 6 USPQ2d 1041 (TTAB 1987) (TRUCOOL for synthetic coolant held likely to be confused with TURCOOL for cutting oil); *In re Curtice-Burns, Inc.*, 231 USPQ 990 (TTAB 1986) (MCKENZIE'S (stylized) for processed frozen fruits and vegetables held likely to be confused with McKenzie for canned fruits and vegetables); *In re Pix of America, Inc.*, 225 USPQ 691 (TTAB 1985) (NEWPORTS for women's shoes held likely to be confused with NEWPORT for outer shirts); *In re Pellerin Milnor Corp.*, 221 USPQ 558 (TTAB 1983) (MILTRON for microprocessor used in commercial laundry machines held likely to be confused with MILLTRONICS (stylized) for electronic control devices for machinery); *In re BASF A.G.*, 189 USPQ 424 (TTAB 1975) (LUTEXAL for resinous chemicals used in dyeing textiles held likely to be confused with LUTEX for non-resinous chemicals used in the textile industry).

1207.01(b)(iii) Comparing Marks That Contain Additional Matter

It is a general rule that likelihood of confusion is not avoided between otherwise confusingly similar marks merely by adding or deleting a house mark or matter that is descriptive or suggestive of the named goods or services. Sometimes the rule is expressed in terms of the dominance of the common term. Therefore, if the dominant portion of both marks is the same, then confusion may be likely notwithstanding peripheral differences. See, e.g., *In re Chatam International Inc.*, 380 F.3d 1340, 1343, 71 USPQ2d 1944, 1946 (Fed. Cir. 2004) ("Viewed in their entireties with non-dominant features appropriately discounted, the marks [GASPAR'S ALE for beer and ale and JOSE GASPAR GOLD for tequila] become nearly identical"); *Hewlett-Packard Co. v. Packard Press Inc.*, 281 F.3d 1261, 62 USPQ2d 1001 (Fed. Cir. 2002)

(even though applicant's mark PACKARD TECHNOLOGIES (with "TECHNOLOGIES" disclaimed) does not incorporate every feature of opposer's HEWLETT PACKARD marks, similar overall commercial impression is created); In re El Torito Restaurants Inc., 9 USPQ2d 2002 (TTAB 1988) (MACHO COMBOS (with "COMBOS" disclaimed) held likely to be confused with MACHO (stylized), both for food items as a part of restaurant services); In re Computer Systems Center Inc., 5 USPQ2d 1378 (TTAB 1987) (CSC ADVANCED BUSINESS SYSTEMS for retail computer stores held likely to be confused with CSC for computer time sharing and computer programming services); In re Equitable Bancorporation, 229 USPQ 709 (TTAB 1986) (RESPONSE held likely to be confused with RESPONSE CARD (with "CARD" disclaimed), both for banking services); In re The U.S. Shoe Corp., 229 USPQ 707 (TTAB 1985) (CAREER IMAGE (stylized) for clothing held likely to be confused with CREST CAREER IMAGES (stylized) for uniforms); In re Apparel Ventures, Inc., 229 USPQ 225 (TTAB 1986) (SPARKS BY SASSAFRAS (stylized) for clothing held likely to be confused with SPARKS (stylized) for footwear); In re Corning Glass Works, 229 USPQ 65 (TTAB 1985) (CONFIRM for a buffered solution equilibrated to yield predetermined dissolved gas values in a blood gas analyzer held likely to be confused with CONFIRMCELLS for diagnostic blood reagents for laboratory use); In re Energy Images, Inc., 227 USPQ 572 (TTAB 1985) (SMART-SCAN (stylized) for optical line recognition and digitizing processors held likely to be confused with SMART for remote data gathering and control systems); In re Riddle, 225 USPQ 630 (TTAB 1985) (RICHARD PETTY'S ACCU TUNE and design for automotive service stations held likely to be confused with ACCUTUNE for automotive testing equipment); In re Denisi, 225 USPQ 624 (TTAB 1985) (PERRY'S PIZZA held likely to be confused with PERRY'S, both for restaurant services); In re Collegian Sportswear Inc., 224 USPQ 174 (TTAB 1984)

(COLLEGIAN OF CALIFORNIA and design (with "CALIFORNIA" disclaimed) held likely to be confused with COLLEGIENNE, both for items of clothing); In re Pierre Fabre S.A., 188 USPQ 691 (TTAB 1975) (PEDI-RELAX for foot cream held likely to be confused with RELAX for antiperspirant).

Exceptions to the above stated general rule regarding additions or deletions to marks may arise if: (1) the marks in their entireties convey significantly different commercial impressions, or (2) the matter common to the marks is not likely to be perceived by purchasers as distinguishing source because it is merely descriptive or diluted. See, e.g., Shen Manufacturing Co. v. Ritz Hotel Ltd., 393 F.3d 1238, 73 USPQ2d 1350 (Fed. Cir. 2004) (RITZ and THE RITZ KIDS create different commercial impressions); In re Farm Fresh Catfish Co., 231 USPQ 495 (TTAB 1986) (CATFISH BOBBERS (with "CATFISH" disclaimed) for fish held not likely to be confused with BOBBER for restaurant services); In re Shawnee Milling Co., 225 USPQ 747 (TTAB 1985) (GOLDEN CRUST for flour held not likely to be confused with ADOLPH'S GOLD'N CRUST and design (with "GOLD'N CRUST" disclaimed) for coating and seasoning for food items); In re S.D. Fabrics, Inc., 223 USPQ 54 (TTAB 1984) (DESIGNERS/FABRIC (stylized) for retail fabric store services held not likely to be confused with DAN RIVER DESIGNER FABRICS and design for textile fabrics).

1207.01(b)(iv) Similarity in Sound - Phonetic Equivalents

Similarity in sound is one factor in determining whether there is a likelihood of confusion between marks. There is no "correct" pronunciation of a trademark because it is impossible to predict how the public will pronounce a particular mark. Therefore, "correct" pronunciation cannot be relied on to avoid a likelihood of confusion. See, e.g., Kabushiki Kaisha Hattori

Tokeiten v. Scuotto, 228 USPQ 461 (TTAB 1985) (SEYCOS and design for watches held likely to be confused with SEIKO for watches and clocks); In re Great Lakes Canning, Inc., 227 USPQ 483 (TTAB 1985) (CAYNA (stylized) for soft drinks held likely to be confused with CANA for, inter alia, canned and frozen fruit and vegetable juices); In re Energy Telecommunications & Electrical Association, 222 USPQ 350 (TTAB 1983) (ENTELEC and design for association services in the telecommunication and energy industries held likely to be confused with INTELECT for conducting expositions for the electrical industry); In re Cresco Mfg. Co., 138 USPQ 401 (TTAB 1963) (CRESCO and design for leather jackets held likely to be confused with KRESSCO for hosiery).

1207.01(b)(v) Similarity in Meaning

Similarity in meaning or connotation is another factor in determining whether there is a likelihood of confusion between marks. The focus is on the recollection of the average purchaser who normally retains a general, rather than specific, impression of trademarks. See, e.g., In re M. Serman & Company, Inc., 223 USPQ 52 (TTAB 1984) (CITY WOMAN held likely to be confused with CITY GIRL, both for clothing); Gastown Inc., of Delaware v. Gas City, Ltd., 187 USPQ 760 (TTAB 1975) (GAS CITY (with "GAS" disclaimed) held likely to be confused with GASTOWN, both for gasoline); Watercare Corp. v. Midwesco-Enterprise, Inc., 171 USPQ 696 (TTAB 1971) (AQUA-CARE (stylized) held likely to be confused with WATERCARE (stylized), both for water conditioning products).

The meaning or connotation of a mark must be determined in relation to the named goods or services. Even marks that are identical in sound and/or appearance may create sufficiently different commercial impressions when applied to the respective parties' goods or services so

that there is no likelihood of confusion. See, e.g., *In re Sears, Roebuck and Co.*, 2 USPQ2d 1312 (TTAB 1987) (CROSS-OVER for bras held not likely to be confused with CROSSOVER for ladies' sportswear, the Board finding that the term was suggestive of the construction of applicant's bras, but was likely to be perceived by purchasers either as an entirely arbitrary designation or as being suggestive of sportswear that "crosses over" the line between informal and more formal wear when applied to ladies' sportswear); *In re British Bulldog, Ltd.*, 224 USPQ 854 (TTAB 1984) (PLAYERS for men's underwear held not likely to be confused with PLAYERS for shoes, the Board finding that the term PLAYERS implies a fit, style, color and durability adapted to outdoor activities when applied to shoes, but "implies something else, primarily indoors in nature" when applied to men's underwear); *In re Sydel Lingerie Co., Inc.*, 197 USPQ 629 (TTAB 1977) (BOTTOMS UP for ladies' and children's underwear held not likely to be confused with BOTTOMS UP for men's clothing, the Board finding that the term connotes the drinking phrase "Drink Up" when applied to men's suits, coats and trousers, but does not have this connotation when applied to ladies' and children's underwear).

1207.01(b)(vi) Doctrine of Foreign Equivalents

Under the doctrine of foreign equivalents, a foreign word (from a language familiar to an appreciable segment of American consumers) and the English equivalent may be held to be confusingly similar. See, e.g., *Continental Nut Co. v. Cordon Bleu, Ltee*, 494 F.2d 1397, 181 USPQ 647 (C.C.P.A. 1974); *In re American Safety Razor Co.*, 2 USPQ2d 1459 (TTAB 1987) (BUENOS DIAS for soap held likely to be confused with GOOD MORNING and design for latherless shaving cream); *In re Ithaca Industries, Inc.*, 230 USPQ 702 (TTAB 1986) (LUPO for men's and boys' underwear held likely to be confused with WOLF and design for various items

of clothing); In re Hub Distributing, Inc., 218 USPQ 284 (TTAB 1983) (EL SOL for clothing and footwear held likely to be confused with SUN and design for footwear).

Although words from modern languages are generally translated into English, the doctrine of foreign equivalents is not an absolute rule, but merely a guideline. The doctrine should be applied only when it is likely that the ordinary American purchaser would stop and translate the foreign word into its English equivalent. Palm Bay Imports, Inc. v. Veuve Clicquot Ponsardin Maison Fondee en 1772, 396 F.3d 1369, 1377, 73 USPQ2d 1689 (Fed. Cir. 2005).

Compare the following decisions involving marks found not confusingly similar, based on consideration of factors such as the overall appearance and pronunciation of the marks, the extent to which the terms are "equivalent," and the relatedness of the named goods and/or services: In re Sarkli Ltd., 721 F.2d 353, 220 USPQ 111 (Fed. Cir. 1983) (REPECHAGE for various skin care products held not likely to be confused with SECOND CHANCE for face creams and other toiletries); In re Buckner Enterprises Corp., 6 USPQ2d 1316 (TTAB 1987) (DOVE and design for solid fuel burning stoves and furnaces held not likely to be confused with PALOMA for various forms of gas heating apparatus); In re L'Oreal S.A., 222 USPQ 925 (TTAB 1984) (HAUTE MODE for hair coloring cream shampoo held not likely to be confused with HI-FASHION SAMPLER (with "SAMPLER" disclaimed) for finger nail enamel); In re Tia Maria, Inc., 188 USPQ 524 (TTAB 1975) (TIA MARIA for restaurant services held not likely to be confused with AUNT MARY'S for canned fruits and vegetables).

The doctrine of foreign equivalents is not normally invoked if the marks alleged to be confusingly similar are both foreign words. See Safeway Stores Inc. v. Bel Canto Fancy Foods Ltd., 5 USPQ2d 1980, 1982 (TTAB 1987) ("[T]his Board does not think it proper to take the

French expression 'bel air' and the Italian expression 'bel aria' and then convert both into English and compare the English translations...."). However, application of the doctrine of foreign equivalents is not barred in every case where the respective marks consist of terms from different foreign languages. *Miguel Torres S.A. v. Casa Vinicola Gerardo Cesari S.R.L.*, 49 USPQ2d 2018 (TTAB 1998) (likelihood of confusion between the Italian DUE TORRI and design for wines, and the Spanish TORRES and design for wines and brandy and TRES TORRES for brandy).

While foreign words are generally translated into English for trademark comparison purposes, words from dead or obscure languages may be so unfamiliar to the American buying public that they should not be translated into English. See *Enrique Bernat F. S.A. v. Guadalajara Inc.*, 210 F.3d 439, 54 USPQ2d 1497 (5th Cir. 2000), reh'g denied 218 F.3d 745 (2000). The test is whether, to those American buyers familiar with the foreign language, the word would denote its English equivalent. See *In re Zazzara*, 156 USPQ 348 (TTAB 1967). The determination of whether a language is "dead" must be made on a case-by-case basis, based upon the meaning that the term would have to the relevant purchasing public.

Example: Latin is generally considered a dead language. However, if there is evidence that a Latin term is still in use by the relevant purchasing public (e.g., if the term appears in current dictionaries or news articles), then a Latin term is not considered dead. The same analysis should be applied to other uncommon languages.

1207.01(b)(vii) Transposition of Terms

Where the primary difference between marks is the transposition of the elements that compose the marks and where this transposition does not change the overall commercial impression, there

may be a likelihood of confusion. See, e.g., *In re Wine Society of America Inc.*, 12 USPQ2d 1139 (TTAB 1989) (THE WINE SOCIETY OF AMERICA and design, for "wine club membership services including the supplying of printed materials, sale of wines to members, conducting wine tasting sessions and recommending specific restaurants offering wines sold by applicant," held likely to be confused with AMERICAN WINE SOCIETY 1967 and design, for a newsletter, bulletin and journal of interest to members of the registrant); *In re Nationwide Industries Inc.*, 6 USPQ2d 1882 (TTAB 1988) (RUST BUSTER (with "RUST" disclaimed) for rust-penetrating spray lubricant held likely to be confused with BUST RUST for penetrating oil); *In re General Tire & Rubber Co.*, 213 USPQ 870 (TTAB 1982) (SPRINT STEEL RADIAL (with "STEEL" and "RADIAL" disclaimed) for tires held likely to be confused with RADIAL SPRINT (with "RADIAL" disclaimed) for tires).

However, if the transposed mark creates a distinctly different commercial impression, then confusion is not likely. See, e.g., *In re Best Products Co., Inc.*, 231 USPQ 988 (TTAB 1986) (BEST JEWELRY and design (with "JEWELRY" disclaimed) for retail jewelry store services held not likely to be confused with JEWELERS' BEST for jewelry).

1207.01(b)(viii) Marks Consisting of Multiple Words

When assessing the likelihood of confusion between compound word marks, one must determine whether there is a portion of the word mark that is dominant in terms of creating a commercial impression. Although there is no mechanical test to select a "dominant" element of a compound word mark, consumers would be more likely to perceive a fanciful or arbitrary term rather than a descriptive or generic term as the source-indicating feature of the mark. Accordingly, if two marks for related goods or services share the same dominant feature and the marks, when viewed

in their entirety, create similar overall commercial impressions, then confusion is likely. See *In re J.M. Originals Inc.*, 6 USPQ2d 1393 (TTAB 1987) (JM ORIGINALS (with "ORIGINALS" disclaimed) for various items of apparel held likely to be confused with JM COLLECTABLES for "knitwear -- namely, sport shirts").

If the common element of two marks is "weak" in that it is generic, descriptive or highly suggestive of the named goods or services, consumers typically will be able to avoid confusion unless the overall combinations have other commonality. See, e.g., *In re Bed & Breakfast Registry*, 791 F.2d 157, 229 USPQ 818 (Fed. Cir. 1986) (BED & BREAKFAST REGISTRY for making lodging reservations for others in private homes held not likely to be confused with BED & BREAKFAST INTERNATIONAL for room booking agency services); *The U.S. Shoe Corp. v. Chapman*, 229 USPQ 74 (TTAB 1985) (COBBLER'S OUTLET for shoes held not likely to be confused with CALIFORNIA COBBLERS (stylized) for shoes); *In re Istituto Sieroterapico E Vaccinogeno, Toscano "SCLAVO" S.p.A.*, 226 USPQ 1035 (TTAB 1985) (ASO QUANTUM (with "ASO" disclaimed) for diagnostic laboratory reagents held not likely to be confused with QUANTUM I for laboratory instrument for analyzing body fluids). See also TMEP §1207.01(b)(ix).

In a sense the public can be said to rely more on the nondescriptive portions of each mark. On the other hand, this does not mean that the public looks only at the differences, or that the descriptive words play no role in creating confusion. *In re National Data Corp.*, 753 F.2d 1056, 224 USPQ 749 (Fed. Cir. 1985) (THE CASH MANAGEMENT EXCHANGE (with "CASH MANAGEMENT" disclaimed) for computerized cash management services held likely to be confused with CASH MANAGEMENT ACCOUNT for various financial services).

1207.01(b)(ix) Weak or Descriptive Marks

The Trademark Trial and Appeal Board and the courts have recognized that merely descriptive and weak designations may be entitled to a narrower scope of protection than an entirely arbitrary or coined word. *In re Central Soya Company, Inc.*, 220 USPQ 914 (TTAB 1984).

However, even a weak mark is entitled to protection against the registration of a similar mark for closely related goods or services. *King Candy Co. v. Eunice King's Kitchen, Inc.*, 496 F.2d 1400, 182 USPQ 108 (C.C.P.A. 1974).

In *In re Hunke & Jochheim*, 185 USPQ 188, 189 (TTAB 1975), the Board stated:

[R]egistration on the Supplemental Register may be considered to establish prima facie that, at least at the time of registration, the registered mark possessed a merely descriptive significance. (citation omitted.) This is significant because it is well established that the scope of protection afforded a merely descriptive or even a highly suggestive term is less than that accorded an arbitrary or coined mark. That is, terms falling within the former category have been generally categorized as "weak" marks, and the scope of protection extended to these marks has been limited to the substantially identical notation and/or to the subsequent use and registration thereof for substantially similar goods.

However, even marks that are registered on the Supplemental Register may be cited under §2(d). *In re Clorox Company*, 578 F.2d 305, 198 USPQ 337 (C.C.P.A. 1978).

1207.01(b)(x) Parody Marks

Parody is not a defense to a likelihood of confusion refusal. There are confusing parodies and non-confusing parodies. See J. McCarthy, *McCarthy on Trademarks and Unfair Competition*, §31.153 (4th ed. 2004). A true parody actually decreases the likelihood of confusion because the effect of the parody is to create a distinction in the viewer's mind between the actual product and the joke. While a parody must call to mind the actual product to be successful, the same success also necessarily distinguishes the parody from the actual product. *Mutual of Omaha Insurance Co. v. Novak*, 648 F. Supp. 905, 231 USPQ 963 (D. Neb. 1986).

Another example of parody can be found in *Columbia Pictures Industries Inc., v. Miller*, 211 USPQ 816 (TTAB 1981) (*CLOTHES ENCOUNTERS* held likely to be confused with *CLOSE ENCOUNTERS OF THE THIRD KIND*, for men's and women's clothing); Cf., *Jordache Enterprises, Inc. v. Hogg Wyld, Inc.*, 828 F.2d 1482, 4 USPQ2d 1216 (10th Cir. 1987) (*LARDASHE* for pants was not an infringement of the *JORDACHE* mark).

1207.01(c) Design Marks

When the marks at issue are both design marks, the issue of the similarity of the marks must be decided primarily on the basis of visual similarity. In this situation, consideration must be given to the fact that a purchaser's recollection of design marks is often of a general and hazy nature. See, e.g., *Red Carpet Corp. v. Johnstown American Enterprises Inc.*, 7 USPQ2d 1404 (TTAB 1988) (stylized house design for service of management of real estate properties for others held not likely to be confused with stylized house design for real estate brokerage services); *In re United Service Distributors, Inc.*, 229 USPQ 237 (TTAB 1986) (silhouette of two profiles facing right within a teardrop background for distributorship services in the field of health and beauty aids held likely to be confused with silhouette of two profiles facing left within an oval

background for skin cream); *Ocean Spray Cranberries, Inc. v. Ocean Garden Products, Inc.*, 223 USPQ 1027 (TTAB 1984) (abstract circular design mark for seafood held not likely to be confused with oval breaking wave design for various food items including juices and fruits); *In re Steury Corp.*, 189 USPQ 353 (TTAB 1975) (design comprised of three generally horizontal bars for boats and camper trailers held likely to be confused with design comprised of two generally horizontal bars for boats and campers); *Matsushita Electric Industrial Co., Ltd. v. Sanders Associates, Inc.*, 177 USPQ 720 (TTAB 1973) (triangular arrow design within a square border for various items of electrical and electronic equipment held likely to be confused with triangular arrow design for various items of electrical and electronic components and equipment).

1207.01(c)(i) Legal Equivalents - Comparison of Words and Their Equivalent Designs

Under the doctrine of legal equivalents, a pictorial representation and its literal equivalent may be found to be confusingly similar. This doctrine is based on a recognition that a pictorial depiction and equivalent wording are likely to impress the same mental image on purchasers. See, e.g., *In re Rolf Nilsson AB*, 230 USPQ 141 (TTAB 1986) (design comprising the silhouette of the head of a lion and the letter "L" for shoes held likely to be confused with LION for shoes); *Puma-Sportschuhfabriken Rudolf Dassler KG v. Garan, Inc.*, 224 USPQ 1064 (TTAB 1984) (designs of mountain lion, for shirts and tops, held confusingly similar to PUMA, for items of clothing; the design of a puma, for items of sporting goods and clothing; and PUMA and design, for T-shirts); *In re Duofold Inc.*, 184 USPQ 638 (TTAB 1974) (design of eagle lined for the color gold, for various items of sports apparel, held likely to be confused with GOLDEN EAGLE and design of an eagle, for various items of clothing).

1207.01(c)(ii) Composite Marks Consisting of Both Words and Designs

Often, the examining attorney must determine whether a likelihood of confusion exists between composite marks that consist of a design element as well as words and/or letters. Frequently the marks at issue are similar in only one element. Although it is not proper to dissect a mark, if one feature of a mark is more significant than another feature, greater weight may be given to the dominant feature for purposes of determining likelihood of confusion. *Giant Food, Inc. v. Nation's Foodservice, Inc.*, 710 F.2d 1565, 218 USPQ 390 (Fed. Cir. 1983). However, the fundamental rule in this situation is that the marks must be considered in their entirety. See *Massey Junior College, Inc. v. Fashion Institute of Technology*, 492 F.2d 1399, 181 USPQ 272 (C.C.P.A. 1974).

If a mark comprises both a word and a design, greater weight is often given to the word, because it is the word that purchasers would use to refer to or request the goods or services. In *re Appetito Provisions Co. Inc.*, 3 USPQ2d 1553, 1554 (TTAB 1987) (APPETITO and design of two broad stripes lined for the colors red and green, for Italian sausage, held likely to be confused with A APPETITO'S and design and A APPETITO'S INC. and design of a sandwich (with "INC." and sandwich design disclaimed), both for restaurant services). The Court of Appeals for the Federal Circuit has cautioned, however, that "[t]here is no general rule as to whether letters or designs will dominate in composite marks; nor is the dominance of letters or design dispositive of the issue." In *re Electrolyte Laboratories Inc.*, 929 F.2d 645, 647, 16 USPQ2d 1239, 1240 (Fed. Cir. 1990) (K+ and design for dietary potassium supplement held not likely to be confused with K+EFF (stylized) for dietary potassium supplement).

The comparison of composite marks must be done on a case-by-case basis without reliance on mechanical rules of construction. See, e.g., *Specialty Brands, Inc. v. Coffee Bean Distributors, Inc.*, 748 F.2d 669, 223 USPQ 1281 (Fed. Cir. 1984) (finding a likelihood of confusion between SPICE VALLEY and SPICE ISLANDS, both for tea); *Spice Islands, Inc. v. The Frank Tea & Spice Co.*, 505 F.2d 1293, 184 USPQ 35 (C.C.P.A. 1974) (SPICE TREE and tree design held not confusingly similar to SPICE ISLANDS and tree design, both for spices); *In re Sun Supermarkets, Inc.*, 228 USPQ 693 (TTAB 1986) (SUN SUPERMARKETS and design of sun held likely to be confused with SUNSHINE and design of sun and SUNRISE and design of sun, all for retail grocery store services).

1207.01(c)(iii) Comparison of Standard Character Marks and Special Form Marks

If a mark (in either an application or a registration) is presented in standard characters, the owner of the mark is not limited to any particular depiction. The rights associated with a mark in standard characters reside in the wording (or other literal element, e.g., letters, numerals, punctuation) and not in any particular display. Therefore, an applicant cannot, by presenting its mark in special form, avoid likelihood of confusion with a mark that is registered in standard characters because the registered marks presumably could be used in the same manner of display. See, e.g., *In re Melville Corp.*, 18 USPQ2d 1386, 1388 (TTAB 1991); *In re Pollio Dairy Products Corp.*, 8 USPQ2d 2012, 2015 (TTAB 1988); *Sunnen Products Co. v. Sunex International Inc.*, 1 USPQ2d 1744, 1751 (TTAB 1987); *In re Hester Industries, Inc.*, 231 USPQ 881, 883, n.6 (TTAB 1986).

1207.01(d) Miscellaneous Considerations

1207.01(d)(i) Doubt Resolved in Favor of Registrant

If there is any doubt as to whether there is a likelihood of confusion, that doubt must be resolved in favor of the prior registrant. *In re Shell Oil Co.*, 992 F.2d 1204, 26 USPQ2d 1687 (Fed. Cir. 1993); *In re Hyper Shoppes (Ohio), Inc.* 837 F.2d 463, 6 USPQ2d 1025 (Fed. Cir. 1988).

1207.01(d)(ii) Absence of Actual Confusion

It is well settled that the relevant test is likelihood of confusion, not actual confusion. It is unnecessary to show actual confusion to establish likelihood of confusion. *Weiss Associates Inc. v. HRL Associates Inc.*, 902 F.2d 1546, 1549, 14 USPQ2d 1840, 1842-43 (Fed. Cir. 1990), and cases cited therein.

1207.01(d)(iii) Third-Party Registrations and Evidence of Third-Party Use

Generally, the existence of third-party registrations cannot justify the registration of another mark that is so similar to a previously registered mark as to create a likelihood of confusion, or to cause mistake, or to deceive. Third-party registrations may be relevant to show that the mark or a portion of the mark is descriptive, suggestive, or so commonly used that the public will look to other elements to distinguish the source of the goods or services. See, e.g., *AMF Inc. v. American Leisure Products, Inc.*, 474 F.2d 1403, 1406, 177 USPQ 268, 269-70 (C.C.P.A. 1973); *Plus Products v. Star-Kist Foods, Inc.*, 220 USPQ 541, 544 (TTAB 1983). Properly used in this limited manner, third-party registrations are similar to dictionaries showing how language is generally used. See, e.g., *Specialty Brands, Inc. v. Coffee Bean Distributors, Inc.*, 748 F.2d 669, 675, 223 USPQ 1281, 1285-86 (Fed. Cir. 1984); *Tektronix, Inc. v. Daktronics, Inc.*, 534 F.2d 915, 917, 189 USPQ 693, 694-95 (C.C.P.A. 1976); *In re Melville Corp.*, 18 USPQ2d 1386, 1388 (TTAB 1991); *In re Dayco Products-Eaglemotive Inc.*, 9 USPQ2d 1910, 1911 (TTAB 1988); *In*

re J.M. Originals Inc., 6 USPQ2d 1393, 1394 (TTAB 1987); United Foods Inc. v. J.R. Simplot Co., 4 USPQ2d 1172, 1174 (TTAB 1987).

Third-party registrations that cover a number of different goods or services have some probative value to the extent that they may serve to suggest that goods or services are of a type that may emanate from a single source, if the registrations are based on use in commerce. However, registrations issued under 15 U.S.C. 1126(e), based on a foreign registration, have very little, if any, persuasive value. In re Albert Trostel & Sons Co., 29 USPQ2d 1783 (TTAB 1993); In re Mucky Duck Mustard Co. Inc., 6 USPQ2d 1467 (TTAB 1988), *aff'd*, 864 F.2d 149 (Fed. Cir. 1988).

The submission of a list of registrations or a copy of a search report is not proper evidence of third-party registrations. To make registrations of record, soft copies of the registrations or the electronic equivalent thereof (i.e., printouts or electronic copies of the registrations taken from the electronic search records of the USPTO) must be submitted. Raccioppi v. Apogee Inc., 47 USPQ2d 1368 (TTAB 1998); In re Smith & Mehaffey, 31 USPQ2d 1531, 1532 n. 3 (TTAB 1994); Weyerhaeuser Co. v. Katz, 24 USPQ2d 1230 (TTAB 1992); In re Hub Distributing, Inc., 218 USPQ 284 (TTAB 1983). See TMEP §710.03.

Evidence of third-party use falls under the sixth du Pont factor - the "number and nature of similar marks in use on similar goods." In re E. I. du Pont de Nemours & Co., 476 F.2d 1357, 1361, 177 USPQ 563, 567 (C.C.P.A. 1973). If the evidence establishes that the consuming public is exposed to third-party use of similar marks on similar goods, this evidence "is relevant to show that a mark is relatively weak and entitled to only a narrow scope of protection." Palm Bay

Imports, Inc. v. Veuve Clicquot Ponsardin Maison Fondée en 1772, 396 F.3d 1369, 1373, 73 USPQ2d 1689, 1693 (Fed. Cir. 2005).

1207.01(d)(iv) Collateral Attack on Registration Improper in Ex Parte Proceeding

Section 7(b) of the Trademark Act, 15 U.S.C. 1057(b), provides that a certificate of registration on the Principal Register shall be prima facie evidence of the validity of the registration, of the registrant's ownership of the mark and of the registrant's exclusive right to use the mark in commerce in connection with the goods or services specified in the certificate. During ex parte prosecution, an applicant will not be heard on matters that constitute a collateral attack on the cited registration (e.g., a registrant's nonuse of the mark). See *In re Dixie Restaurants*, 105 F.3d 1405, 41 USPQ2d 1531 (Fed. Cir. 1997); *Cosmetically Yours, Inc. v. Clairol Inc.*, 424 F.2d 1385, 1387, 165 USPQ 515, 517 (C.C.P.A. 1970); *In re Peebles Inc.* 23 USPQ2d 1795, 1797 n. 5 (TTAB 1992); *In re Pollio Dairy Products Corp.*, 8 USPQ2d 2012, 2014-15 (TTAB 1988).

It is also inappropriate for the applicant to place the burden of showing a likelihood of confusion on the owner of the cited registration. *In re Majestic Distilling Co.*, 315 F.3d 1311, 1318, 65 USPQ2d 1201, 1206 (Fed. Cir. 2003) ("[I]t is the duty of the PTO and this court to determine whether there is a likelihood of confusion between two marks.... [I]t is no answer for the applicant to ask that the application be passed to publication to see whether the owner of the cited mark will oppose the registration.," quoting *Dixie Restaurants*, supra, 105 F.3d at 1408, 41 USPQ2d at 1535.)

1207.01(d)(v) Classification of Goods/Services

The classification of goods and services has no bearing on the question of likelihood of confusion. Rather, it is the manner in which the applicant and/or registrant have identified their

goods or services that is controlling. *Jean Patou Inc. v. Theon Inc.*, 9 F.3d 971, 29 USPQ2d 1771 (Fed. Cir. 1993); *National Football League v. Jasper Alliance Corp.*, 16 USPQ2d 1212, 1216 n.5 (TTAB 1990).

1207.01(d)(vi) Prior Decisions of Examining Attorneys

Each case must be decided on its own merits. Previous decisions by examining attorneys in approving other marks are without evidentiary value and are not binding on the agency or the Board. *In re Sunmarks Inc.*, 32 USPQ2d 1470 (TTAB 1994); *In re National Novice Hockey League, Inc.*, 222 USPQ 638, 641 (TTAB 1984).

1207.01(d)(vii) Sophisticated Purchasers

The fact that purchasers are sophisticated or knowledgeable in a particular field does not necessarily mean that they are immune from source confusion. See *In re Decombe*, 9 USPQ2d 1812 (TTAB 1988); *In re Pellerin Milnor Corp.*, 221 USPQ 558 (TTAB 1983). However, circumstances suggesting care in purchasing may tend to minimize likelihood of confusion.

1207.01(d)(viii) Consent Agreements

The term "consent agreement" generally refers to an agreement in which a party (e.g., a prior registrant) consents to the use and/or registration of a mark by another party (e.g., an applicant for registration of the same mark or a similar mark), or in which each party consents to the use and/or registration of the same mark or a similar mark by the other party.

A consent agreement may be submitted by the applicant to overcome a refusal of registration under §2(d) of the Act, or in anticipation of a refusal to register. When a consent agreement is submitted, the examining attorney will consider the agreement, and all other evidence in the

record, to determine likelihood of confusion. The examining attorney should not solicit a consent agreement.

Consents come in different forms and under circumstances in infinite variety. They are, however, but one factor to be taken into account with all of the other relevant circumstances bearing on the likelihood of confusion referred to in §2(d). *In re N.A.D. Inc.*, 754 F.2d 996, 224 USPQ 969 (Fed. Cir. 1985).

In *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 1363, 177 USPQ 563, 568 (C.C.P.A. 1973), the Court of Customs and Patent Appeals stated as follows:

[W]hen those most familiar with use in the marketplace and most interested in precluding confusion enter agreements designed to avoid it, the scales of evidence are clearly tilted. It is at least difficult to maintain a subjective view that confusion will occur when those directly concerned say it won't. A mere assumption that confusion is likely will rarely prevail against uncontroverted evidence from those on the firing line that it is not.

A consent agreement that is not merely a "naked" consent typically details reasons why no likelihood of confusion exists and/or arrangements undertaken by the parties to avoid confusing the public. *In re Permagrain Products, Inc.*, 223 USPQ 147 (TTAB 1984) (consent agreement found to be "naked" because the agreement did not restrict the markets in such a way as to avoid confusion).

The Court of Appeals for the Federal Circuit has made it clear that consent agreements should be given great weight, and that the Office should not substitute its judgment concerning likelihood of confusion for the judgment of the real parties in interest without good reason, that is, unless the other factors clearly dictate a finding of likelihood of confusion. *Amalgamated Bank of New*

York v. Amalgamated Trust & Savings Bank, 842 F.2d 1270, 6 USPQ2d 1305 (Fed. Cir. 1988); Bongrain International (American) Corp. v. Delice de France Inc., 811 F.2d 1479, 1 USPQ2d 1775 (Fed. Cir. 1987); and In re N.A.D. Inc., 754 F.2d 996, 224 USPQ 969 (Fed. Cir. 1985).

Compare In re Mastic Inc., 829 F.2d 1114, 4 USPQ2d 1292 (Fed. Cir. 1987) (refusal to register affirmed even with a consent to register where applicant had not used the mark in commerce and consent agreement contained contradictory statements).

The examining attorney should give great weight to a proper consent agreement. The examining attorney should not interpose his or her own judgment concerning likelihood of confusion when an applicant and registrant have entered into a credible consent agreement and, on balance, the other factors do not dictate a finding of likelihood of confusion.

A consent agreement is not the same as a "concurrent use" agreement. The term "concurrent use" is a term of art that refers to a geographical restriction on the registration. See TMEP §§1207.04 etseq. regarding concurrent use.

1207.01(d)(ix) Fame of Mark

The fame of a registered mark is a factor to be considered in determining likelihood of confusion. In re E. I. du Pont de Nemours & Co., 476 F.2d 1357, 1361, 177 USPQ 563, 567 (C.C.P.A. 1973). Famous marks enjoy a wide latitude of legal protection because they are more likely to be remembered and associated in the public mind than a weaker mark. Palm Bay Imports, Inc. v. Veuve Clicquot Ponsardin Maison Fondée en 1772, 396 F.3d 1369, 1374, 73 USPQ2d 1689, 1694 (Fed. Cir. 2005); Bose Corp. v. QSC Audio Products Inc., 293 F.3d 1367, 63 USPQ2d 1303 (Fed. Cir. 2002) (Trademark Trial and Appeal Board erred in discounting the fame of opposer's marks ACOUSTIC WAVE and WAVE); Recot, Inc. v. M.C. Becton, 214 F.3d

1322, 1327, 54 USPQ2d 1894, 1897 (Fed. Cir. 2000) (Board erred in limiting the weight accorded to the fame of opposer's FRITO-LAY mark); *Kenner Parker Toys Inc. v. Rose Art Industries, Inc.*, 963 F.2d 350, 352, 22 USPQ2d 1453, 1456 (Fed. Cir. 1992), cert. denied, 506 U.S. 862 (1992) (Board erred in discounting the fame of opposer's mark PLAY-DOH). The Court of Appeals for the Federal Circuit has stated:

[A] mark with extensive public recognition and renown deserves and receives more legal protection than an obscure or weak mark.

Achieving fame for a mark in a marketplace where countless symbols clamor for public attention often requires a very distinct mark, enormous advertising investments, and a product of lasting value. After earning fame, a mark benefits not only its owner, but the consumers who rely on the symbols to identify the source of a desired product. Both the mark's fame and the consumer's trust in that symbol, however, are subject to exploitation by free riders.

Kenner Parker Toys, 963 F.2d at 353, 22 USPQ2d at 1456.

Fame for likelihood of confusion purposes and fame for dilution purposes, 15 U.S.C. 1125(c), are distinct concepts. Fame for dilution purposes is an either/or proposition, whereas the "fame" factor in the likelihood of confusion analysis varies along a spectrum. *Palm Bay Imports*, 396 F.3d at 1374-75, 73 USPQ2d at 1694.

When present, the fame of the mark is "a dominant factor in the likelihood of confusion analysis for a famous mark, independent of the consideration of the relatedness of the goods." *Recot, Inc. v. M.C. Becton*, 214 F.3d 1322, 1328, 54 USPQ2d 1894, 1898. However, like the other du Pont factors, the fame of a mark may be considered only if there is relevant evidence of record. See TMEP §1207.01 and cases cited therein.

It is not necessary to show recognition by every segment of the population. When determining likelihood of confusion, fame is measured with regard to "the class of customers and potential customers of a product or service, and not the general public." *Palm Bay Imports*, at 396 F.3d 1375, 73 USPQ2d 1695. Thus, the Federal Circuit affirmed the finding that VEUVE CLICQUOT had achieved fame among purchasers of champagne and sparkling wine, where the record showed that sales volume and advertising expenditures over a 15-year period were "substantial;" that VEUVE CLICQUOT was the second leading brand sold in the United States, sold in 8,000 restaurants nationwide, and in liquor stores, wine shops and other establishments; that the product was advertised in general interest and wine specialty magazines, on the radio, on the Internet, and through point-of-sale displays, wine tastings and sponsorship of events; and that the product had been featured in articles and reviews in both specialized and general interest magazines. *Id.*

Direct evidence of consumer recognition of a mark is not necessary. The "fame of a mark may be measured indirectly, among other things, by the volume of sales and advertising expenditures of the goods traveling under the mark, and by the length of time those indicia of commercial awareness have been evident." See *Bose*, 293 F.3d at 1371, 63 USPQ2d at 1305, and cases cited therein. It is important to consider the context of how the proposed mark is presented in sales and advertising materials. In *Bose*, the Court found that evidence of extensive sales and advertising expenses established the fame of opposer's WAVE and ACOUSTIC WAVE marks, noting that opposer's sales literature, advertisements, and promotional materials included frequent and prominent references to the marked product separate and apart from the house mark BOSE. In *Giant Food, Inc. v. Nation's Foodservice, Inc.*, 710 F.2d 1565, 218 USPQ 390 (Fed. Cir. 1983), the court found that the mark GIANT FOOD was famous based on 45 years of use, sales in

excess of \$1 billion per year, extensive media exposure and prominent display on the facade of supermarkets. However, in *Shen Manufacturing Co. v. Ritz Hotel Ltd.*, 393 F.3d 1238, 73 USPQ2d 1350 (Fed. Cir. 2004), the court found that evidence of more than \$5 million annual sales of products bearing the mark, over 100 years of use, and advertising expenditure of hundreds of thousands of dollars per year was insufficient to establish that RITZ had achieved the extensive public recognition of a famous mark.

In *Tiffany & Broadway v. Commissioner*, 167 F. Supp.2d 949 (S.D. Tex. 2001), the fame of four registered marks cited against the applicant was a significant factor in finding a likelihood of confusion between applicant's TIFFANY for ladies' dress shoes and registrant's TIFFANY and TIFFANY & CO. for a variety of goods, including jewelry, china, silverware, glassware, leather goods, belt buckles, ties, scarves, clocks, watches, brushes and lamps, and for retail store services specializing in the sale of jewelry, watches, clocks, and gift items. The ex parte record included excerpts from 18 news articles where the registrant Tiffany & Company was identified as a famous business; citations to three published decisions in which the fame of the TIFFANY mark had been judicially recognized; and evidence that the registrant's goods were sold at over 60 Tiffany locations worldwide--including 34 in the United States--and through independently-owned retail stores and mail order outlets.

1207.01(d)(x) Conflicting Marks Owned by Different Parties

During the examination of an application, the examining attorney should consider separately each registration found in a search of the marks registered in the Office that may bar registration of the applicant's mark under §2(d). If the examining attorney finds registrations that appear to be owned by more than one registrant, he or she should consider the extent to which dilution may

indicate that there is no likelihood of confusion. However, the examining attorney must cite all the marks that are considered to be a bar to registration of the mark presented in the application, even if they are owned by different parties. The examining attorney should always explain the reason that the mark in each cited registration is grounds for refusal under

Trademark infringement is a violation of the exclusive rights attaching to a trademark without the authorization of the trademark owner or any licensees (provided that such authorization was within the scope of the license). Infringement may occur when one party, the "infringer", uses a trademark which is identical or confusingly similar to a trademark owned by another party, in relation to products or services which are identical or similar to the products or services which the registration covers. An owner of a trademark may commence civil legal proceedings against a party which infringes its registered trademark. In the US, the Trademark Counterfeiting Act of 1984 criminalized the intentional trade in counterfeit goods and services.[1]:485-486

The ACTA trade agreement, signed in May 2011 by the United States, Japan, Switzerland, and the EU, requires that its parties add criminal penalties, including incarceration and fines, for copyright and trademark infringement, and obligated the parties to active police for infringement.[2][3][4]

In many countries (but not in countries like the United States, which recognizes common law trademark rights), a trademark which is not registered cannot be "infringed" as such, and the trademark owner cannot bring infringement proceedings. Instead, the owner may be able to commence proceedings under the common law for passing off or misrepresentation, or under legislation which prohibits unfair business practices. In some jurisdictions, infringement of trade dress may also be actionable.

Where the respective marks or products or services are not identical, similarity will generally be assessed by reference to whether there is a likelihood of confusion that consumers will believe the products or services originated from the trademark owner.

Likelihood of confusion is not necessarily measured by actual consumer confusion, though normally one of the elements, but by a series of criteria Courts have established. A prime example is the test announced by the Ninth Circuit Court of Appeals in AMF,

Inc v Sleekcraft Boats, 599 F.2d 341 (C.A.9) 1979. The Court there announced eight specific elements to measure likelihood of confusion:

1. *Strength of the mark*
2. *Proximity of the goods*
3. *Similarity of the marks*
4. *Evidence of actual confusion*
5. *Marketing channels used*
6. *Type of goods and the degree of care likely to be exercised by the purchaser*
7. *Defendant's intent in selecting the mark*
8. *Likelihood of expansion of the product lines*[5]

Other Courts have fashioned their own tests for likelihood of confusion—like those announced in *In re E.I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973), known collectively as the DuPont factors.

If the respective marks and products or services are entirely dissimilar, trademark infringement may still be established if the registered mark is well known pursuant to the Paris Convention. In the United States, a cause of action for use of a mark for such dissimilar services is called trademark dilution.

In some jurisdictions a party other than the owner (e.g. a licensee) may be able to pursue trademark infringement proceedings against an infringer if the owner fails to do so.

The party accused of infringement may be able to defeat infringement proceedings if it can establish a valid exception (e.g. comparative advertising) or defence (e.g. laches) to infringement, or attack and cancel the underlying registration (e.g. for non-use) upon which the proceedings are based.

EXHIBIT 3

UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Everett McKinley Dirksen United States Courthouse
Room 2722 - 219 S. Dearborn Street
Chicago, Illinois 60604



Office of the Clerk
Phone: (312) 435-5850
www.ca7.uscourts.gov

January 11, 2010

No.: 06-3555	ALBERT PATTERSON, doing business as WORLD WRESTLING SUPERSTARS OF WRESTLING, INC. and doing business as W.W.A. SUPERSTARS, Plaintiff - Appellant v. WORLD WRESTLING ENTERTAINMENT, INC., GOOD HUMOR CORPORATION, et al., Defendants - Appellees
Originating Case Information:	
District Court No: 2:03-cv-00374-RTR Eastern District of Wisconsin District Judge Rudolph T. Randa	

Upon consideration of the **PLAINTIFF-APPELLANT'S MOTION TO DISMISS APPEAL**, file on January 8, 2010, by counsel for the appellant,

IT IS ORDERED that this case is **DISMISSED**, pursuant to Federal Rule of Appellate Procedure 42(b).

form name: c7_FinalOrderWMandate (form ID: 137)



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U.S.C.A. - 7th Circuit
RECEIVED LMB

UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT JAN 08 2010 / RMS

GINO J. AGNELLO
CLERK

ALBERT PATTERSON, doing business as
WORLD WRESTLING SUPERSTARS
OF WRESTLING, INC. and doing business
as W.W.A SUPERSTARS,

)
)
) 06-3555
)
)

Plaintiff - Appellant

) On Appeal from the
) Eastern District of Wisconsin
) Case No. 02:03 cv 00374
)

v.

WORLD WRESTLING ENTERTAINMENT, INC.)
GOOD HUMOR CORPORATION, et al.)

Defendants-Appellees)

U.S.C.A. - 7th Circuit
FILED
JAN - 8 2010 RMS
GINO J. AGNELLO
CLERK

PLAINTIFF-APPELLANT'S MOTION TO DISMISS APPEAL

Plaintiff-Appellant, by and through his counsel, Charles Drake Boutwell, states that the parties have resolved the appeal by settlement agreement and moves pursuant to Fed. R. App P. 42(b) that the Court dismiss the appeal with prejudice with each side to bear its own costs.

Respectfully submitted,

ALBERT PATTERSON


By Charles Drake Boutwell

CERTIFICATE OF SERVICE

I, Charles Drake Boutwell, certify that I served a copy of this motion on Mr. Curtis Krasik, RINKPATRICK & LOCKHART 535 Smithfield Street, Pittsburgh, Pennsylvania 15222, counsel for Defendant-Appellee on January 8, 2010 via mail.


Charles Drake Boutwell

Rev. 5/85) Judgment in a Civil Case •

United States District Court

EASTERN DISTRICT OF WISCONSIN

JUDGMENT IN A CIVIL CASE

ALBERT PATTERSON,
d/b/a World Wrestling Association,
Superstars of Wrestling, Inc.,

Plaintiff,

v.

Case No. 02-C-0240

ANDREW McMANUS,
WORLD WRESTLING ALL-STARS, INC.,
WARNER COMMUNICATIONS, INC.,
HUGHES ELECTRONICS CORPORATION,
DIRECTV, INC.,
SPRING COMMUNICATIONS II LLC, and
IMPACT TALENT, INC.

Defendants.

U.S. District Court
Eastern Dist. of Wis.

I hereby certify that this is a
true and correct copy of the original now
remaining of record in my office.

SOFRON B. NEDILSKY, Clerk

DATED:

9-1-05 By E. DeLamon Deputy

This action has come before the court, the issues have been decided and
a decision has been rendered. Therefore,

IT IS ORDERED AND ADJUDGED that default judgment is entered
against World Wrestling All-Stars, Inc., in favor of plaintiff.

IT IS FURTHER ORDERED that defendant World Wrestling All-Stars, Inc.
is enjoined from using, displaying, licensing, or otherwise presenting plaintiff's service
marks: WORLD WRESTLING ASSOCIATION, WWA, SUPERSTAR WRESTLING,
SUPERSTARS WRESTLING, SUPERSTARS OF WRESTLING, SUPERSTARS OF
PRO WRESTLING, WWA SUPERSTAR WRESTLING, WWA SUPERSTARS

WRESTLING, WWA SUPERSTARS OF WRESTLING, and WWA SUPERSTARS OF PRO WRESTLING.

IT IS FURTHER ORDERED that this case is closed.

APPROVED:

/s/ C. N. Clevert, Jr.

C. N. CLEVERT

U. S. District Judge

SOFRON B. NEDILSKY

Clerk

August 31, 2005

Date

/s/ Katina Hubacz

(By) Deputy Clerk

CHARLES DRAKE BOUTWELL
ATTORNEY AT LAW
3075 PLUM ISLAND DRIVE
NORTHBROOK, ILLINOIS 60062
847-272-2126
FAX 847-272-2275

August 21, 2005

Honorable Judge Charles N. Clevert:
United States District Court
208 U.S. Courthouse
517 E. Wisconsin Ave.
Milwaukee, WI 53202-4581

Re: Patterson v. World Wrestling All-Stars, Inc..
Case No. 02 C 240

Dear Judge Clevert:

Please find enclosed a proposed order pursuant to the hearing on August 18, 2005 in which an order of default was entered against World Wrestling All-Stars, Inc. If there are any questions, please contact me.

Sincerely,


Charles Drake Boutwell



IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN

ALBERT PATTERSON d/b/a)
WORLD WRESTLING ASSOCIATION,)
SUPERSTARS OF WRESTLING, INC. and)
d/b/a W.W.A. SUPERSTARS)

Plaintiff)

v.)

ANDREW McMANUS, individually,)
WORLD WRESTLING ALL-STARS INC.,)
WARNER COMMUNICATIONS, INC.,)
HUGHES ELECTRONICS CORPORATION,)
DIRECTV, INC., SPRING)
COMMUNICATIONS II, LLC.;)
WORLD WRESTLING ENTERTAINMENT. INC.;)
and IMPACT TALENT, INC.)

Defendants

No. 02 C 240

JUDGE CLEVERT

JURY TRIAL DEMANDED

ORDER

Pursuant to the Motion by the Plaintiff, the defendant WORLD WRESTLING ALL-STARS, INC. is hereby found to be in default and judgment is hereby entered against defendant WORLD WRESTLING ALL-STARS, INC in favor of the plaintiff.

The defendant WORLD WRESTLING ALL-STARS, INC. is enjoined from using, displaying, licensing or otherwise presenting plaintiff's service marks: WORLD WRESTLING ASSOCIATION, WWA, SUPERSTAR WRESTLING, SUPERSTARS WRESTLING, SUPERSTARS OF WRESTLING, SUPERSTARS OF PRO WRESTLING, WWA SUPERSTAR WRESTLING, WWA SUPERSTARS WRESTLING, WWA SUPERSTARS OF WRESTLING, and WWA SUPERSTARS OF PRO WRESTLING.

The defendant WORLD WRESTLING ALL-STARS, INC. is further enjoined from using names which are likely to cause confusion with plaintiff's marks including any tradenames using the words WORLD WRESTLING, WW, WORLD WRESTLING ALL-STARS, WORLD WRESTLING SUPERSTARS, WORLD WRESTLING SUPERSTARS OF WRESTLING, and WRESTLING SUPERSTARS.

There being no further matters before the court, this matter is dismissed.



STIPULATED ORDER FOR PERMANENT INJUNCTION

The defendant WORLD WRESTLING ENTERTAINMENT, INC. their officers, agents, servants, employees and all persons in active concert or participation with them, or any of them, are enjoined from: Using, displaying, licensing or otherwise presenting plaintiff's service marks WORLD WRESTLING ASSOCIATION, WWA, SUPERSTAR WRESTLING, SUPERSTARS WRESTLING, SUPERSTARS OF WRESTLING, SUPERSTARS OF PRO WRESTLING, WWA SUPERSTAR WRESTLING, WWA SUPERSTARS WRESTLING, WWA SUPERSTARS OF WRESTLING, and WWA SUPERSTARS OF PRO WRESTLING.

The defendant is further enjoined from using names which are likelihood to cause confusion with his marks including any tradenames using the words WORLD WRESTLING or WW in words or logo form.

AO 450 (Rev. 5/85) Judgment in a Civil Case

UNITED STATES DISTRICT COURT

EASTERN District of WISCONSINAMENDED
JUDGMENT IN A CIVIL CASELOUIS JONES, Trustee, and WORLD
WRESTLING ASSOCIATION, et al

v.

CASE NUMBER: 90-C-991

TITAN SPORTS, INC.

U.S. District Court
Eastern Dis. of Wis.
I hereby certify that this is a
true and correct copy of the original
now remaining of record in my office.
SOFRON B. NEDILSKY, Clerk

DATED:

DEC 21 1993

By K.M. Maxwell
Deputy

☐ Jury Verdict. This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

☒ Decision by Court. This action came to hearing before the Court. The issues have been heard and a decision has been rendered.

Plaintiffs Louis Jones and World Wrestling Association, successor to United Wrestling Association d/b/a U.W.A. Superstar Wrestling and Defendant Titan Sports, Inc. having consented to a settlement of all the claims raised in this case,

IT IS ORDERED AND ADJUDGED that Plaintiffs Louis Jones and World Wrestling Association, successor to United Wrestling Association d/b/a U.W.A. Superstar Wrestling recover from Defendant Titan Sports, Inc. the amount of \$209,500, which amount has been paid and satisfied.

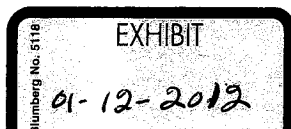
IT IS FURTHER ORDERED AND ADJUDGED that the Defendant Titan Sports, Inc. is permanently enjoined from using the names "Superstars of Wrestling," "Superstar Wrestling" and "Superstars Pro Wrestling in connection with wrestling activities in the United States, and that Plaintiffs Louis Jones and World Wrestling Association, successor to United Wrestling Association d/b/a U.W.A. Superstar Wrestling are permitted to use said names in connection with wrestling activities. This judgment does not reclude any party from using the term "Superstars".

IT IS FURTHER ORDERED AND ADJUDGED that this action is dismissed with prejudice.



Dated: December 7, 1993

SOFRON B. NEDILSKY, Clerk



D. M. Lead
(By) Deputy Clerk

UNITED STATES DISTRICT COURT

MAY 31 2001

EASTERN District of WISCONSIN

AT

O'CLOCK
SOFRON B. NEDILSKYALBERT PATTERSON d/b/a
WORLD WRESTLING ASSOCIATION,
SUPERSTARS OF WRESTLING, INC.

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 00-C-951

V.
DALE R. GAGNER d/b/a
Superstars of Wrestling, individually
and AWA SUPER STARS OF
WRESTLING, INC.

[] Jury Verdict. This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

[X] Decision by Court. This action brought by Plaintiff Albert Patterson d/b/a World Wrestling Association, Superstars of Wrestling, Inc. against Defendants Dale R. Gagner d/b/a Superstars of Wrestling and AWA Super Stars of Wrestling, Inc. came before the court, the Honorable Thomas J. Curran, District Judge, presiding, and the parties having agreed to settle all claims,

IT IS ORDERED AND ADJUDGED THAT:

each of the Defendants Dale R. Gagner d/b/a Superstars of Wrestling, individually, and AWA Superstars of Wrestling, Inc. and its affiliates, successors and assigns and any business in which Dale Gagner owns a 50% or more interest, are enjoined from using any of the marks WORLD WRESTLING ASSOCIATION, SUPERSTAR WRESTLING, SUPERSTARS WRESTLING, SUPERSTARS OF WRESTLING, SUPERSTARS OF PRO WRESTLING, WWA SUPERSTAR WRESTLING, WWA SUPERSTARS WRESTLING, WWA SUPERSTARS OF WRESTLING, WWA SUPERSTARS OF PRO WRESTLING or any other mark, word or name similar to Plaintiff's marks which are likely to cause confusion anywhere in the United States of America.

Further that Dale Gagner is enjoined from directly or indirectly receiving any remuneration whatsoever from any event that uses Plaintiff's service Marks as above identified; unless said event shall have a written license agreement to use said Marks from the Plaintiff, his heirs or assigns.

IT IS FURTHER ORDERED AND ADJUDGED

that this action is dismissed with prejudice.

Dated: May 31, 2001

SOFRON B. NEDILSKY, Clerk

Plaintiff's
Exhibit E

(By) Deputy Clerk

DATED
6/1/01
By *[Signature]*
DeputyTrue and correct copy of the original now
remaining of record in my office.
SOFRON B. NEDILSKY, Clerk

EXHIBIT

DIRECT FROM
THE OLYMPIC CITY,
SYDNEY AUSTRALIA,
THE CROWNING
OF THE FIRST
WWA WORLD
CHAMPION

A WRESTLING
EXTRAVAGANZA
NOT SEEN BEFORE
ON TV

WORLD WRESTLING ALL STARS

BUT

JUVINTUD
GUERRERA

THE INCEPTION

"ROAD DOG"
JESSE JAMES

MARCUS
BUFF
BAGWELL

STEVIE
RAY

"THE CHOSEN ONE"
JEFF JARRETT

JERRY
"THE KING"
LAWLER

WATCHED OVER BY
THE COMMISSIONER

BRET "THE HITMAN" HART

plus

MANY MORE!
PLAYING
THIS MONTH
ON PPV

ONE NIGHT ONLYSM series pay-per-view event

TV
14
DLV

10⁰ SPRING COMMUNICATIONS
An affiliate of Anschutz Entertainment Group

*ONE NIGHT ONLY is a trademark & service mark of Spring Communications LLC

IN DEMANDSM
PAY-PER-VIEW

DIRECT FROM
THE OLYMPIC CITY
IN SYDNEY, AUSTRALIA,
THE CROWNING
OF THE FIRST
WWA WORLD
CHAMPION



A WRESTLING
EXTRAVAGANZA
NOT SEEN BEFORE
ON TV

WORLD WRESTLING ALL STARS



MARCUS
BUFF
BAGWELL



JUVINTUD
GUERRERA



STEVIE
RAY

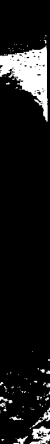


featuring

"THE CHOSEN ONE"
JEFF JARRETT



"ROAD DOG"
JESSE JAMES



JERRY
"THE KING"
LAWLER

WATCHED OVER BY
THE COMMISSIONER

BRET "THE HITMAN" HART

THE INCEPTION
PLAYING
THIS MONTH
ON PAY-PER-VIEW

a ONE NIGHT ONLYSM series pay-per-view event

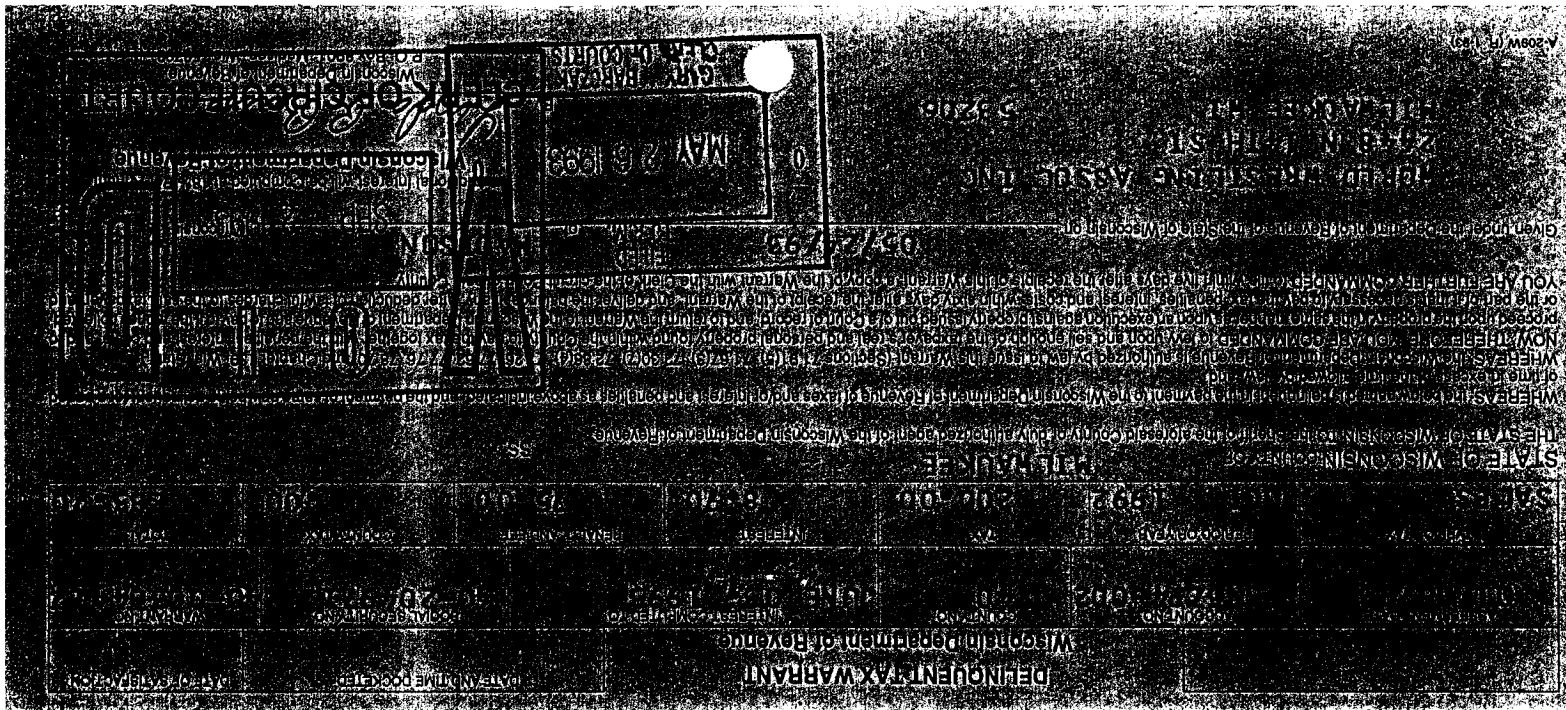
TV
14
DLV

on IN DEMAND pay-per-view

10^{SD} SPRING COMMUNICATIONS
An affiliate of Anschutz Entertainment Group

*ONE NIGHT ONLY is a trademark & service mark of Spring Communications II LLC

IN DEMANDSM
PAY-PER-VIEW



STATE OF WISCONSIN

CIRCUIT COURT MILWAUKEE

COUNTY

WITHDRAWAL OF DELINQUENT TAX WARRANT

The Delinquent OCTOBER 1992 SALES Tax Warrant filed in the
below entitled matter on the 26 TH day of MAY, 1993 with the clerk of said court and thereafter duly
docketed in the Delinquent Tax Docket for the County of MILWAUKEE, the clerk of said Court is hereby
notified to withdraw and void the warrant and any liens attached by it, pursuant to s. 71.91(5)(g), Wis. Stats.

STATE OF WISCONSIN 40204971
(Department of Revenue)

- vs -

WORLD WRESTLING ASSOC INC
2448 N 14TH STREET
MILWAUKEE WI 53206

WITHDRAWAL OF DELINQUENT TAX WARRANT NO. 4000364417

Dated this 01 ST day of SEPTEMBER, 1993

BY: Linda Bussse (SEAL)

WISCONSIN DEPARTMENT OF REVENUE
Delinquent Tax Control Section
P.O. Box 8901
Madison, Wisconsin 53708-8901

EXHIBIT 4

Delaware

PAGE 1

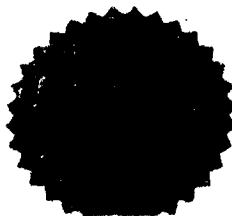
The First State

I, HARRIET SMITH WINDSOR, SECRETARY OF STATE OF THE STATE OF DELAWARE DO HEREBY CERTIFY THAT THE SAID "WWF, INC." FILED A CERTIFICATE OF AMENDMENT, CHANGING ITS NAME TO "TITAN SPORTS INC.", ON THE TWELFTH DAY OF JANUARY, A.D. 1988, AT 9:01 O'CLOCK A.M.

AND I DO HEREBY FURTHER CERTIFY THE SAID "TITAN SPORTS INC." FILED A CERTIFICATE OF AMENDMENT, CHANGING ITS NAME TO "WORLD WRESTLING FEDERATION ENTERTAINMENT, INC.", ON THE TWENTY-NINTH DAY OF JULY, A.D. 1999, AT 9 O'CLOCK A.M.

AND I DO HEREBY FURTHER CERTIFY THE SAID "WORLD WRESTLING FEDERATION ENTERTAINMENT, INC." FILED A CERTIFICATE OF AMENDMENT, CHANGING ITS NAME TO "WORLD WRESTLING ENTERTAINMENT, INC.", ON THE FOURTH DAY OF JULY, A.D. 2002, AT 8 O'CLOCK A.M.

AND I DO HEREBY CERTIFY THAT THE SAID "WORLD WRESTLING ENTERTAINMENT, INC." IS THE LAST KNOWN TITLE OF RECORD OF THE AFORESAID CORPORATION.



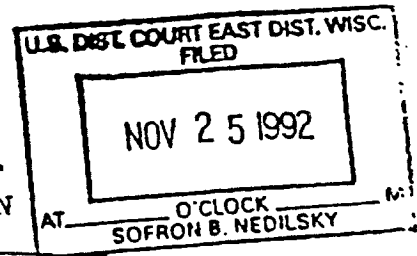
Harriet Smith Windsor
Harriet Smith Windsor, Secretary of State

2133300 8321

Plaintiff's

AUTHENTICATION: 1987086

EXHIBIT



UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

LOUIS JONES, Trustee, and
WORLD WRESTLING ASSOCIATION,
Successor to UNITED WRESTLING
ASSOCIATION d/b/a U.W.A.
SUPERSTAR WRESTLING,

Plaintiff,

v.

Case No. 90-C-991

TITAN SPORTS, INC.,

Defendant.

AMENDED OFFER OF JUDGMENT

The defendant, by its attorneys, hereby consents to the entry of a judgment in the foregoing action, pursuant to Rule 68 of the Federal Rules of Civil Procedure, for the amount of \$209,500, as well as consenting to an order prohibiting defendant from using the names "Superstars of Wrestling," "Superstar Wrestling" and "Superstars of Pro Wrestling" in conjunction with wrestling activities in the United States and permitting plaintiff to use said names in connection with wrestling activities. This offer of judgment does not preclude the ^{any} ~~either~~ ^{party} ~~defendant~~ from using the term "Superstars."

MICHAEL, BEST & FRIEDRICH

By: 

Charles P. Graupner
One of the Attorneys for
Defendant

Accepted: 

Albert P. Patterson

Date: 11-25, 1992

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

SUPERSTARS OF WRESTLING)	
(WWA SUPERSTARS), INC. and)	
ALBERT PATTERSON,)	
)	
Petitioners,)	
)	
v.	)	Cancellation No. 24,465
)	
TITANSports, INC.,)	
)	
Respondent.)	

EXPRESS MAIL CERTIFICATE

"Express Mail" label number EF883527559US

Date of Deposit April 19, 1996

I hereby certify that the following attached papers:

RESPONDENT'S REPLY TO PETITIONERS' RESPONSES TO
RESPONDENT'S MOTION TO DISMISS PETITION TO CANCEL UNDER
FED.R.CIV.P. 12(b)(6) AND/OR MOTION FOR SUMMARY
JUDGMENT

TRANSMITTAL LETTER FOR RESPONDENT'S MOTION FOR
SANCTIONS AGAINST PETITIONERS PURSUANT TO FED.R.CIV.P.
11 AND DOCUMENTS IN SUPPORT THEREOF

RESPONDENT'S MOTION FOR SANCTIONS AGAINST PETITIONERS
PURSUANT TO FED.R.CIV.P. 11

BRIEF IN SUPPORT OF RESPONDENT'S MOTION FOR SANCTIONS
AGAINST PETITIONERS

DECLARATION OF FRANKLIN B. MOLIN

are being deposited with the United States Postal Service
"Express Mail Post Office to Addressee" service under 37 CFR
1.10, on the date indicated above and are addressed to Box
TTAB/No Fee, Assistant Commissioner for Trademarks, 2900
Crystal Drive, Arlington, VA 22202-3513.

Bernadette Turner

Typed or printed name of person mailing papers

Bernadette Turner

Signature of person mailing papers

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

SUPERSTARS OF WRESTLING)	
(WWA SUPERSTARS), INC. and)	
ALBERT PATTERSON,)	
)	
Petitioners,)	
)	
v.	)	Cancellation No. 24,465
)	
TITANSports, INC.,)	
)	
Respondent.)	

**RESPONDENT'S MOTION FOR SANCTIONS AGAINST
PETITIONERS PURSUANT TO FED.R.CIV.P. 11**

Respondent, TitanSports, Inc. ("Titan"), by its undersigned counsel, hereby submits this Motion For Sanctions Pursuant to Fed.R.Civ.P. 11 against Petitioners Superstars of Wrestling (WWA Superstars), Inc., and Albert Patterson ("Patterson"), and moves the Board for an Order (1) dismissing the Petition to Cancel filed by Patterson, (2) canceling Patterson's Registration No. 1,857,015, cited in the Petition to Cancel, and (3) any other relief that the Board may deem appropriate.

As explained further in the accompanying memorandum, litigation between Titan, as defendant, and Patterson, as plaintiff, in the United States District Court for the Eastern District of Wisconsin, Civil Action Number 90-C-991, concluded with the Order attached to Patterson's petition, which Order

determined all rights between the parties. Patterson has filed this Petition to Cancel in contravention of the terms of the Court Order.

Patterson's Petition to Cancel is a direct violation of Rule 11 in that it is (1) being presented for the improper purpose of harassing Titan, and (2) the claims and other legal contentions therein are unwarranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law.

This motion is supported by the accompanying Declaration of Franklin B. Molin.

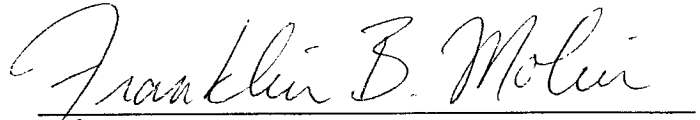
Pursuant to Fed.R.Civ.P. 11(c)(1)(a), Titan served this Motion on Patterson on March 4, 1996, and before filing this Motion has allowed Patterson the required 21 days (plus 5 days because service was made by overnight courier, pursuant to 37

C.F.R. § 2.119(c)) to withdraw the improper and frivolous
Petition to Cancel.

Respectfully submitted,

TITANSports, INC.

Date: March 4, 1996

A handwritten signature in cursive script, reading "Franklin B. Molin". The signature is written in dark ink and is positioned above a horizontal line.

Robert D. Yeager

Reg. No. 25,047

Franklin B. Molin

Reg. No. 37,397

KIRKPATRICK & LOCKHART LLP

1500 Oliver Building

Pittsburgh, PA 15222

(412) 355-8605

Attorneys for Respondent
TitanSports, Inc.

CERTIFICATE OF SERVICE

I certify that I am counsel for Respondent, TitanSports, Inc., and that copies of the foregoing RESPONDENT'S MOTION FOR SANCTIONS AGAINST PETITIONERS PURSUANT TO FED.R.CIV.P. 11 was served on Petitioners, Superstars of Wrestling (WWA Superstars), Inc. and Albert Patterson by Federal Express overnight courier as follows:

Mr. Albert Patterson
Superstars of Wrestling (WWA Superstars)
2448 North 14th Street
Milwaukee, WI 53206

this 4th day of March, 1996.

Franklin B. Molin

CERTIFICATE OF SERVICE

I certify that I am counsel for Respondent, TitanSports, Inc., and that copies of the foregoing RESPONDENT'S MOTION FOR SANCTIONS AGAINST PETITIONERS PURSUANT TO FED.R.CIV.P. 11 was served on Petitioners, Superstars of Wrestling (WWA Superstars), Inc. and Albert Patterson by Federal Express overnight courier as follows:

Mr. Albert Patterson
Superstars of Wrestling (WWA Superstars)
2448 North 14th Street
Milwaukee, WI 53206

this 19th day of April, 1996.

Franklin B. Mohr

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

SUPERSTARS OF WRESTLING)	
(WWA SUPERSTARS), INC. and)	
ALBERT PATTERSON,)	
)	
Petitioners,)	
)	
v.	)	Cancellation No. 24,465
)	
TITANSPORTS, INC.,)	
)	
Respondent.)	

EXPRESS MAIL CERTIFICATE

"Express Mail" label number EF883527559US

Date of Deposit April 19, 1996

I hereby certify that the following attached papers:

RESPONDENT'S REPLY TO PETITIONERS' RESPONSES TO
RESPONDENT'S MOTION TO DISMISS PETITION TO CANCEL UNDER
FED.R.CIV.P. 12(b)(6) AND/OR MOTION FOR SUMMARY
JUDGMENT

TRANSMITTAL LETTER FOR RESPONDENT'S MOTION FOR
SANCTIONS AGAINST PETITIONERS PURSUANT TO FED.R.CIV.P.
11 AND DOCUMENTS IN SUPPORT THEREOF

RESPONDENT'S MOTION FOR SANCTIONS AGAINST PETITIONERS
PURSUANT TO FED.R.CIV.P. 11

BRIEF IN SUPPORT OF RESPONDENT'S MOTION FOR SANCTIONS
AGAINST PETITIONERS

DECLARATION OF FRANKLIN B. MOLIN

are being deposited with the United States Postal Service
"Express Mail Post Office to Addressee" service under 37 CFR
1.10, on the date indicated above and are addressed to Box
TTAB/No Fee, Assistant Commissioner for Trademarks, 2900
Crystal Drive, Arlington, VA 22202-3513.

Bernadette Turner

Typed or printed name of person mailing papers

Bernadette Turner

Signature of person mailing papers

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

SUPERSTARS OF WRESTLING)	
(WWA SUPERSTARS), INC. and)	
ALBERT PATTERSON,)	
)	
Petitioners,)	
)	
v.	)	Cancellation No. 24,465
)	
TITANSPORTS, INC.,)	
)	
Respondent.)	

**TRANSMITTAL LETTER FOR RESPONDENT'S MOTION FOR
SANCTIONS AGAINST PETITIONERS PURSUANT TO
FED.R.CIV.P. 11 AND DOCUMENTS IN SUPPORT THEREOF**

Pittsburgh, Pennsylvania 15222

April 19, 1996

Box TTAB/No Fee
Assistant Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA 22202-3513

Sir:

We enclose herewith (1) Respondent's Motion For Sanctions Against Petitioners Pursuant to Fed.R.Civ.P. 11; (2) Brief In Support Of Respondent's Motion For Sanctions Against Petitioners; and (3) Declaration Of Franklin B. Molin.

Pursuant to Fed.R.Civ.P. 11(c)(1)(a), Respondent served this Motion For Sanctions, Brief In Support and Declaration on Petitioners on March 4, 1996, and before filing this Motion For

X

Sanctions has allowed Petitioners the required 21 days (plus 5 days because service was made by overnight courier, pursuant to 37 C.F.R. § 2.119(c)) to withdraw the improper and frivolous Petition to Cancel. X

Respondent filed on March 4, 1996 a Motion To Dismiss Petition To Cancel Under Fed.R.Civ.P. 12(b)(6) And/Or Motion For Summary Judgment. On March 22, 1996, the Trademark Trial and Appeal Board issued a notice suspending proceedings pending disposition of Respondent's Motion To Dismiss And/Or Motion For Summary Judgment. The notice states "Any paper filed during the pendency of this motion which is not relevant thereto will be given no consideration."

This Motion For Sanctions and the supporting documents are relevant to Respondent's Motion To Dismiss because this Motion For Sanctions arises from the same conduct which forms the basis for Respondent's Motion To Dismiss. This Motion For Sanctions demonstrates that Petitioners' activities which form the basis for Respondent's Motion To Dismiss were motivated by an intent to harass Respondent through abuse of formal procedures and otherwise, and further that Petitioners' legal and factual claims, in addition to being substantively unwarranted and insupportable, are frivolous and made in bad faith. This Motion For Sanctions is considered by Respondent as being part of Respondent's Motion To Dismiss, and is being filed after the Motion To Dismiss *only* because Respondent is required to do so by Fed.R.Civ.P. 11. Respondent served this Motion upon Petitioners

at the same time as serving the Motion To Dismiss, and expressly references this Motion For Sanctions in the Motion To Dismiss filed March 4, 1996.

Respondent has not withdrawn the Petition To Cancel, but rather has filed numerous non-responsive documents purporting to be responses which in fact continue his abusive behavior.

Respectfully submitted,



Robert D. Yeager
Reg. No. 25,047
Franklin B. Molin
Reg. No. 37,397

KIRKPATRICK & LOCKHART LLP
1500 Oliver Building
Pittsburgh, PA 15222
(412) 355-8605

Attorneys for Respondent
TitanSports, Inc.

CERTIFICATE OF SERVICE

I certify that I am counsel for Respondent, TitanSports, Inc., and that copies of the foregoing TRANSMITTAL LETTER FOR RESPONDENT'S MOTION FOR SANCTIONS AGAINST PETITIONERS PURSUANT TO FED.R.CIV.P. 11 AND DOCUMENTS IN SUPPORT THEREOF was served on Petitioners, Superstars of Wrestling (WWA Superstars), Inc. and Albert Patterson by Federal Express overnight courier as follows:

Mr. Albert Patterson
Superstars of Wrestling (WWA Superstars)
2448 North 14th Street
Milwaukee, WI 53206

this 19th day of April, 1996.

Franklin B. Molini

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

SUPERSTARS OF WRESTLING)	
(WWA SUPERSTARS), INC. and)	
ALBERT PATTERSON,)	
)	
Petitioners,)	
)	
v.	)	Cancellation No. 24,465
)	
TITANSports, INC.,)	
)	
Respondent.)	

EXPRESS MAIL CERTIFICATE

"Express Mail" label number EF883527562US

Date of Deposit March 4, 1996

I hereby certify that the following attached papers:

RESPONDENT'S MOTION TO DISMISS PETITION TO CANCEL UNDER
FED.R.CIV.P. 12(b)(6) AND/OR MOTION FOR SUMMARY
JUDGMENT

BRIEF IN SUPPORT OF RESPONDENT'S MOTION TO DISMISS
PETITION TO CANCEL UNDER FED.R.CIV.P. 12(b)(6) AND/OR
MOTION FOR SUMMARY JUDGMENT

DECLARATION OF FRANKLIN B. MOLIN

are being deposited with the United States Postal Service
"Express Mail Post Office to Addressee" service under 37 CFR
1.10, on the date indicated above and are addressed to Box
TTAB/No Fee, Assistant Commissioner for Trademarks, 2900
Crystal Drive, Arlington, VA 22202-3513.

Carol A. Matessa

Typed or printed name of person mailing papers

Carol A. Matessa

Signature of person mailing papers

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

SUPERSTARS OF WRESTLING)	
(WWA SUPERSTARS), INC. and)	
ALBERT PATTERSON,)	
)	
Petitioners,)	
)	
v.	)	Cancellation No. 24,465
)	
TITANSports, INC.,)	
)	
Respondent.)	

DECLARATION OF FRANKLIN B. MOLIN

I, FRANKLIN B. MOLIN, declare as follows:

1. I am an attorney with the firm of Kirkpatrick & Lockhart LLP, 1500 Oliver Building, Pittsburgh, PA 15222, counsel for respondent TitanSports, Inc. ("Titan") in this cancellation action. I am a member of the bar of the Commonwealth of Pennsylvania and am a registered patent agent, Registration Number 37,397.

2. I make this declaration in support of Respondent's Motion To Dismiss Petition to Cancel Under Fed.R.Civ.P. 12(b)(6) And/Or Motion for Summary Judgment and in support of Respondent's Motion for Sanctions Against Petitioners Pursuant To Fed.R.Civ.P. 11. My declaration is based in part on personal knowledge and in part on information and belief.

3. Attached as Exhibit 1 is a true and complete copy of the Complaint against Titan filed October 9, 1990 by

Petitioner's predecessor in the United States District Court for the Eastern District of Wisconsin.

4. Attached as Exhibit 2 is a true and complete copy of the Court's Decision and Order of September 4, 1992 vacating the jury's award and ordering a new trial.

5. Attached as Exhibit 3 is a true and complete copy of the Amended Offer of Judgment signed by Albert Patterson ("Patterson") and Titan's counsel on November 25, 1992 in the presence of the Court.

6. Attached as Exhibit 4 is a true and complete copy of the Court's Order of January 22, 1993.

7. Attached as Exhibit 5 is a true and complete copy of the Court's Amended Judgment of December 21, 1993.

8. Attached as Exhibit 6 is a true and complete copy of the transcript of the Motion Hearing of November 25, 1992.

9. Attached as Exhibit 7 is a true and complete copy of U.S. Registration No. 1,819,240 to Titan for WWF Superstars.

10. Attached as Exhibit 8 is a true and complete copy of Registration No. 1,857,015 to Patterson for SW SUPERSTARS OF WRESTLING plus design.

11. Attached as Exhibit 9 is a true and complete of the Office Action of December 30, 1993 from the Patent and Trademark Office to Patterson.

12. Attached as Exhibit 10 is a true and complete copy of the "Motion to Clarify Injunction" filed December 14, 1994 by Patterson.

13. Attached as Exhibit 11 is a true and complete copy of the Order of December 15, 1994 denying Patterson's December 14, 1994 Motion.

14. Attached as Exhibit 12 is a true and complete copy of the letter to the Judge from Patterson filed with the Court on December 20, 1994.

15. Attached as Exhibit 13 is a true and complete copy of the letter to the Judge from Patterson dated December 29, 1994 filed with the Court on December 30, 1994.

16. Attached as Exhibit 14 is a true and complete copy of the Order of January 3, 1995 denying all relief requested in Patterson's December 29, 1994 letter.

17. Attached as Exhibit 15 is a true and complete copy of the letter to the Judge from Patterson dated February 18, 1995.

18. Attached as Exhibit 16 is a true and complete copy of the February 15, 1993 letter from Patterson to Titan's counsel Charles P. Graupner.

19. Attached as Exhibit 17 is a true and complete copy of the November 7, 1994 letter from Patterson to Patterson's former counsel Charles Drake Boutwell and copied to Titan's counsel Joseph Gemignani.

20. Attached as Exhibit 18 is a true and complete copy of the November 18, 1994 letter from Patterson to Titan's counsel Charles P. Graupner.

21. Attached as Exhibit 19 is a true and complete copy of the November 29, 1994 letter from Patterson to Titan's counsel Joseph Gemignani.

22. Attached as Exhibit 20 is a true and complete copy of the December 11, 1994 letter from Patterson to Patterson's former counsel Charles Drake Boutwell copied to Titan and its counsel Joseph Gemignani.

23. Attached as Exhibit 21 is a true and complete copy of the December 12, 1994 fax to Patterson's former counsel Charles Drake Boutwell copied to Titan and its counsel Joseph Gemignani.

24. Attached as Exhibit 22 is a true and complete copy of the January 10, 1995 letter from Patterson addressed to "To Whom It May Concern" and copied to Titan and its counsel Joseph Gemignani.

25. Attached as Exhibit 23 is a true and complete copy of the July 21, 1995 letter from Patterson to "to Whom It May Concern".

26. Attached as Exhibit 24 is a true and complete copy of the September 20, 1995 letter from Patterson to Titan and its counsel Joseph Gemignani.

27. Attached as Exhibit 25 is a true and complete copy of the December 18, 1995 letter from Patterson to Titan and its counsel Joseph Gemignani.

35. Attached as Exhibit 33 is a true and complete copy of the Reply issued June 4, 1992 by the United States Patent and Trademark Office to Patterson.

36. Attached as Exhibit 34 is a true and complete copy of the December 18, 1994 letter from Patterson to the Patent and Trademark Office copied to Titan and Titan's counsel Joseph Gemignani.

37. Attached as Exhibit 35 is a true and complete copy of the letter of October 18, 1994 from Gary A. Essmann, Esq., to Patterson.

38. Attached as Exhibit 36 is a true and complete copy of the disclaimer filed by Titan January 6, 1995, in the United States Patent and Trademark Office with respect to Registration No. 1,819,240.

39. Attached as Exhibit 37 is a true and complete copy of the letter of February 8, 1996 from Gary A. Essmann, Esq. to Patterson, copied to Titan's counsel Joseph Gemignani and Jerry McDevitt and to Patterson's other former counsel Charles Drake Boutwell.

The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 USC 1001, and that such willful false statements may jeopardize the validity of the Declaration or any registration resulting therefrom, declares that all statements made of his own knowledge in this Declaration are true and that all statements made on information and belief are believed to be true.

March 4, 1996


Franklin B. Molin

1
4

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9
8
7

ATTENTION GOLFERS
Every single item in the entire store is marked down!

SATURDAY, MAY 16 / SUNDAY, MAY 17

GOLF SHACK
6163 W. Forest Home

WORLD WRESTLING FEDERATION PRESENTS
FRIDAY, MAY 15th, 8:00 P.M. MECCA AUDITORIUM

CHAIN MATCH
BILLY JACK HAYNES
VS.
HERCULES
Bobby "The Brain" Heenan—Manager

SPECIAL MAIN EVENT
KO KO B. WARE—
THE BIRDMAN
VS.
DANNY DAVIS

SPECIAL EVENTS
BRUTUS BEEFCAKE VS. JOHNNY V.
LADIES CHAMPIONSHIP TAG TEAM MATCH WITH FOUR GIRL W.W.F. SUPERSTARS OF WRESTLING.
PLUS FOUR MORE EXCITING W.W.F. BOUTS

Ticket \$12-10-16. ON SALE AT: Best Area Sports Stores. All Ticketed Outlets.
MECCA Box Office. Phone Charge (414) 271-7230.

WATCH SUPERSTARS OF WRESTLING SUNDAYS 12:00 A.M.—1:15 P.M.—11:15 P.M.
WATCH WRESTLING CHALLENGE SATURDAYS 10:30 P.M. ON TV & WITH TV

© 1987 W.W.F. TRADEMARK OF THOMPSON INC.

MILWAUKEE BREWERS
vs. Kansas City
SERIES

Friday 7:30 PM
Saturday 7 PM
Sunday 1:30 PM

PLAINTIFF'S EXHIBIT
O
ALL-STATE LEGAL SUPPLY CO.

Thirsting f

Fishermen and farmer about dryness in North

HAYWARD, WIS. — What northern Wisconsin needs more than anything else right now is a long, tall drink.

Not the whisky kind please understand, but the water type that comes with rain that this part of the state has been without for too long.

For a while there Wednesday, it seemed certain that the dry spell would be broken. The sky turned black and ugly and thunder rumbled and the wind picked up and those of us fishing for walleyes on the Chippewa flowage started scrambling for our rain gear.

It didn't happen, though. In less than an hour, the sky cleared, the sun came out, the wind continued to blow and the smell of dry heat returned.

There has been no significant rainfall recorded here since the middle of March. And it shows.

Lawns are turning brown and brittle. Lake and stream levels, low to start with because of a mostly snowless winter, continued to drop even further. And the forests, although green, are tinder dry.

Farmers are fearing a significant crop loss and visiting fishermen are wondering whether there will be enough water left to launch a boat.

Forest Ranger Larry Glodowski says the Hayward area is like a desert right now.

While there is concern over what the dry conditions will do to agricultural and recreational fishing, the greatest fear right now has to do with forest fires.

Department of Natural Resources personnel, area businessmen, tourist officials, visitors and residents are holding their breath these days as they await a break in the weather.

While most everyone would like to see about three days of gentle, soaking rainfall, the main concern is that when a storm does come, it will be the electrical kind with a lot of lightning, which could trigger fires all over the place.

The potential for dangerous forest fires is enormous, and it has given

Gretzky's team eliminate Red W

Edmonton, Alberta — AP — Eating their Stanley Cup semifinal series with the Edmonton Oilers, the Detroit Red Wings were willing to let Wayne Gretzky get his goals.

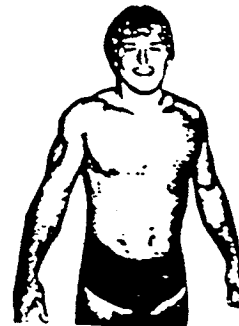
The game plan was to shut down the rest of the Oilers.

Gretzky didn't score a goal in the series, but the Red Wings still lost the best-of-seven Campbell Conference series, 4-1, because they couldn't stop his teammates, especially Mark Messier.

The Oilers won the series with a 6-3 victory Wednesday night. Trailing, 3-1, in the second period, Edmonton scored five straight goals, including two by Messier.

"They have the greatest player in the world and the second-greatest player is the world," Red Wings Coach Jacques Demme said of Gretzky and Messier collectively. "What

★ ★ SUPER STAR ★ ★
WRESTLING
MILWAUKEE AUDITORIUM
SAT. - SEPT. 6 7:00 P. M.



MAIN EVENT - 20 MAN BATTLE ROYAL
\$20,000 PURSE TO THE WINNER
 SPECIAL REFEREE - O. C. WHITE, WAWA

SECOND MAIN EVENT - DOUBLE TITLE MATCH
RANDY SAVAGE - ICW Champion
 vs.
KING KONG PATTERSON - UWA Champion



3rd Main Event - Special Grudge Match
BOB ORTON, JR. vs. RONNIE GARVIN

4th Main Event
JEFF MAY vs. SUPERSTAR BERRY "O"
INDIAN PETE vs. DOOR KNOB NIXON

Bad Brain Lucas vs. The Mexican Champ
PLUS THREE OTHER BIG BOUTS
RING ANNOUNCER - LEE ROTHMAN

Tickets On Sale at: Hank Miller's
 WATCH SUPER STAR WREST

**PLAINTIFF'S
 EXHIBIT**

S

ALL-STATE LEGAL SUPPLY CO.

\$6.00

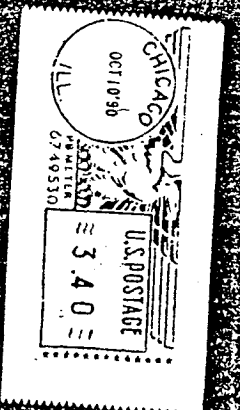
Box Office, and America Foodliner

NEL 2 - WED. 8:00 - 9:00 P. M.

CERTIFIED

P 476 805 372

MAIL



MCBRIDE BAKER & COLES

Northwestern Atrium Center
500 West Madison Street, 40th Floor
Chicago, Illinois 60606

TO

VIA CERTIFIED MAIL/RETURN
RECEIPT REQUESTED

Titan Sports, Inc.
1055 Summer Street
Stamford, Connecticut

06904

United States District Court

EASTERN

DISTRICT OF

WISCONSIN

UNITED WRESTLING ASSOCIATION, INC.
d.b.a. U.W.A. SUPERSTAR WRESTLING

SUMMONS IN A CIVIL ACTION

V.

CASE NUMBER: 90-C-0982

TITAN SPORTS, INC.

TO: (Name and Address of Defendant)

Titan Sports, Inc.
1055 Summer Street
Stamford, Connecticut 06904

YOU ARE HEREBY SUMMONED and required to file with the Clerk of this Court and serve upon

PLAINTIFF'S ATTORNEY (name and address)

McBride Baker & Coles
Northwestern Atrium Center
500 West Madison Street, 40th Floor
Chicago, Illinois 60606
(312) 715-5700
ATTENTION: Charles Drake Boutwell

an answer to the complaint which is herewith served upon you, within twenty (20) days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

SOFRON B. NEDILSKY

OCT 9 1990

CLERK

DATE

BY DEPUTY CLERK

15/ Jmz

NOTICE AND ACKNOWLEDGMENT FOR
SERVICE BY MAIL

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN

UNITED WRESTLING ASSOCIATION, INC.)	
d.b.a. U.W.A. SUPERSTAR WRESTLING)	
Plaintiff,)	
	)	CIVIL ACTION
V.	)	NO. 90-C-0991
)	
TITAN SPORTS, INC.)	
)	
)	
Defendant.)	

NOTICE

To: Titan Sports, Inc.
1055 Summer Street
Stamford, Connecticut 06904

The enclosed summons and complaint are served pursuant to Rule 4(c)(2)(C)(ii) of the Federal Rules of Civil Procedure

You must complete the acknowledgment part of this form and return one copy of the completed form to the sender within 20 days.

You must sign and date the acknowledgment. If you are served on behalf of a corporation, unincorporated association (including a partnership), or other entity, you must indicate under your signature your relationship to that entity. If you are served on behalf of another person and you are authorized to receive process, you must indicate under your signature your authority.

If you do not complete and return the form to the sender within 20 days you (or the party on whose behalf you are being served) may be required to pay any expenses incurred in serving a summons and complaint in any other manner permitted by law.

If you do complete and return this form, you (or the party on whose behalf you are being served) must answer the complaint within 20 days. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

NOTICE AND ACKNOWLEDGMENT FOR
SERVICE BY MAIL

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN

UNITED WRESTLING ASSOCIATION, INC.)	
d.b.a. U.W.A. SUPERSTAR WRESTLING)	
Plaintiff,)	
)	
V.	)	CIVIL ACTION
	)	NO. 90-C-0991
)	
TITAN SPORTS, INC.)	
)	
)	
Defendant.)	

NOTICE

To: Titan Sports, Inc.
1055 Summer Street
Stamford, Connecticut 06904

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If you do complete and return this form, you (or the party on whose behalf you are being served) must answer the complaint within 20 days. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

I declare under penalty of perjury, that this Notice and Acknowledgment of Receipt of Summons and Complaint will have been mailed on OCTOBER 9, 1990.

Kristine A. Deering
Signature

October 9, 1990
Date of Signature

=====

ACKNOWLEDGEMENT OF RECEIPT OF SUMMONS AND COMPLAINT

I declare, under penalty of perjury, that I received a copy of the summons and of the complaint in the above-captioned manner at _____.

insert address

Signature

Relationship to Entity/Authority to
Receive Service of Process

Date of Signature

Added by Pub.L. 97-462, January 12, 1983; amended April 29, 1985, effective August 1, 1985.

NOTICE AND ACKNOWLEDGMENT FOR
SERVICE BY MAIL

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN

UNITED WRESTLING ASSOCIATION, INC.)
d.b.a. U.W.A. SUPERSTAR WRESTLING)
Plaintiff,)

V.)

TITAN SPORTS, INC.)

Defendant.)

CIVIL ACTION
NO. 90-C-0991

NOTICE

To: Titan Sports, Inc.
1055 Summer Street
Stamford, Connecticut 06904

The enclosed summons and complaint are served pursuant to Rule 4(c)(2)(C)(ii) of the Federal Rules of Civil Procedure

You must complete the acknowledgment part of this form and return one copy of the completed form to the sender within 20 days.

You must sign and date the acknowledgment. If you are served on behalf of a corporation, unincorporated association (including a partnership), or other entity, you must indicate under your signature your relationship to that entity. If you are served on behalf of another person and you are authorized to receive process, you must indicate under your signature your authority.

If you do not complete and return the form to the sender within 20 days you (or the party on whose behalf you are being served) may be required to pay any expenses incurred in serving a summons and complaint in any other manner permitted by law.

If you do complete and return this form, you (or the party on whose behalf you are being served) must answer the complaint within 20 days. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

File Activity Request

From: Records Department

___ 5th Floor ☒ 6th Floor

TO: Sylvia Helms

Date: 10/16/90

Complete this section for all requests

Client Name: Itan Sports, Inc. U.

Matter Name: United Wrestling Association, Inc.

Client Number: 112617-012-10011

Folder Title: Pleadings Vol. I

☐ NEW CLIENT FILE

Document Type ☒ 1. Formal Papers ___ 4. Transcripts (Depositions) ___ 7. Working Papers ___ 10. FDA Files

Check one ___ 2. Briefs ___ 5. Correspondence ___ 8. General

___ 3. Exhibits ___ 6. Discovery Material ___ 9. FCC Filings

Cross Reference _____

Attorney: _____ Attorney Number _____ Location Code: _____

☐ Check if continuation file. Previous File Number: _____ (Folder Number)

Storage Medium _____ Action Required _____

Check One: ☒ Pressboard Folder ☐ Pocket File

Check One: ☐ Retain in Central File Room ☒ Retain in Attorney Office

☐ CHANGE CLIENT FILE

☐ Client Name: _____

☐ Matter Name: _____

☐ Folder Title: _____

☐ TRANSFER CLIENT FILE

Transfer the above file to the following location: _____

effective: _____

☐ RETIRE or REACTIVATE CLIENT FILE

Check one: ☐ Destroy ☐ Retire ☐ Return to Client ☐ Reactivate

Inactive File location: _____

ANDRUS, SCEALES, STARKE & SAWALL

INTELLECTUAL PROPERTY LAW

SUITE 1100
100 EAST WISCONSIN AVENUE
MILWAUKEE, WISCONSIN 53202-4178

Telephone: (414) 271-7590
Fax: (414) 271-5770

Glenn O. Starke
Eugene R. Sawall
Daniel D. Fetterley
George H. Solveson
Gary A. Essmann
Thomas M. Wozny
Michael E. Taken
Joseph J. Jochman, Jr.
Andrew S. McConnell
Peter C. Stomma
Edward R. Williams, Jr.
Mimi C. Goller
Joseph D. Kuborn

Elwin A. Andrus
(1904-1982)
Merl E. Scales
(1911-1987)

Of Counsel:
Frank S. Andrus

William L. Falk
Reg. Patent Agent

February 8, 1996

Al Patterson, President
World Wrestling Association
2448 North 14th Street
Milwaukee, WI 53206


RE: OUR REFERENCE: 1225-3 GN
"WORLD WRESTLING SUPERSTARS", ETC.

Dear Al:

I assumed that my letter dated February 13, 1995 brought our discussions to an end. Apparently, you do not share this understanding since I continue to receive faxes and telephone calls from you. Please do not forward any further communications to my office. This is formal notification to all parties involved that I am not your legal representative in this or any other matter. Hopefully, this will end your contact with my office.

Very truly yours,

ANDRUS, SCEALES, STARKE & SAWALL


Gary A. Essmann

GAE:mk (G.1225-3)

cc: Joseph A. Gemignani, Esq.
Jerry S. McDevitt, Esq.
Charles Drake Boutwell, Esq.

ANDRUS, SCEALES, STARKE & SAWALL

INTELLECTUAL PROPERTY LAW

Glenn O. Starke
Eugene R. Sawall
Daniel D. Fetterley
George H. Solveson
Gary A. Essmann
Thomas M. Wozny
Michael E. Taken
Joseph J. Jochman, Jr.
Andrew S. McConnell
Peter C. Stomma
Edward R. Williams, Jr.
Mimi C. Goller
Joseph D. Kuborn

SUITE 1100
100 EAST WISCONSIN AVENUE
MILWAUKEE, WISCONSIN 53202-4178

Telephone: (414) 271-7590
Fax: (414) 271-5770

Elwin A. Andrus
(1904-1982)
Merl E. Sceales
(1911-1987)

Of Counsel:
Frank S. Andrus

William L. Falk
Reg. Patent Agent

February 13, 1996

Al Patterson, President
World Wrestling Association
2448 North 14th Street
Milwaukee, WI 53206

PERSONAL PICK-UP

**RE: OUR REFERENCE: 1225-3 GN
"WORLD WRESTLING SUPERSTARS", ETC.**

Dear Al:

Per your request, enclosed is our file relating to the above matter.
Please note that we have not retained copies of any of the materials.

Very truly yours,

ANDRUS, SCEALES, STARKE & SAWALL



Gary A. Essmann

GAE:mk (G.1225-3)

Receipt of the above file acknowledged this 13 day of February,
1996.


Al Patterson

EXHIBIT 5

DAMAGE DETERMINATION REPORT
FOR UNITED WRESTLING ASSOCIATION INC.
VS
TITAN SPORTS INC.
A Trademark Infringement Case

Submitted by:

Ellis G. Godwin

November 19, 1992

INTRODUCTION

The purpose of this report is to determine an amount which Titan Sports, as licensee, would have paid United Wrestling Association, as licensor, in the years 1984, 1985, 1986, 1987, 1988, 1989, and 1990 if Titan Sports had negotiated a royalty agreement with what was then the United Wrestling Association ("UWA") for the use of UWA's marks Superstar of Wrestling and Superstar Wrestling.

APPROACH

The approach used in making this determination will be the reasonable royalty method. This method is based on a hypothetical negotiation between the trademark owner and the infringer assuming a willingness on the part of each to bargain in good faith. Consideration in developing the reasonable royalty rate will encompass not only the basic economic variables of income and expenses, but also an equal assumption of a willingness to be fair by both parties. This requires that consideration be given to both the income derived from these marks as well as the percentage of total cost needed to generate that income. Using the aforementioned factors as a foundation for this report, the reasonable royalty rate in this case will be determined by the following procedures:

1. Determining the gross income base for which the reasonable royalty rate should be applied.

2. Determining an average established royalty Rate for the infringed marks.
3. Determining the infringers total variable direct and general and administrative cost as a "percentage of gross income".
4. Apportioning the total variable direct and general and administrative cost as a percentage of gross income to the average established royalty rate.
5. Determining the reasonable royalty rate by adjusting the average established royalty rate by the percentage of the total direct variable and general and administrative cost apportioned to the established royalty rate.

RECORDS EXAMINED

This report is based on an analysis of the following materials supplied by the Defendant which were sworn by Titan to be true correct and complete:

1. U.S. Tax Returns for the years 1984, 1985, 1986, 1987, 1988 and 1989.
2. Accountants work papers for the years 1984, 1985, 1986, 1987, 1988, and 1989.
3. License Agreements between Titan Sports and its Licensee's for the use of its marks.
4. Advertisements from the list of Plaintiff's and Defendant's trial exhibits showing the use of the Superstar Marks.
5. Wisconsin State Income Tax Returns

ANALYSIS

Gross Income

Based on an examination of the plaintiffs and defendants exhibits, including Superstars VII magazine and other information relating to products and advertising for the various Titan income producing activities, the assumption has been made that the marks are used in practically every part of the business, and that all income earned from all aspects of the business in part are due to the use of the marks Superstar Wrestling and Superstars of Wrestling.

Titan Sports Inc. is required to report all its income earned as a corporation to the Internal Revenue Service on line 1 of its U.S. Tax return. Therefore the gross income base which will be used in this analysis has been taken from line 1 of the U.S. Tax return for the years 1984, 1985, 1986, 1987, 1988, 1989 and 1990.

<u>Year</u>	<u>Gross Income Per Federal Income Tax Return</u>
1984	\$ 29,596,974
1985	63,125,159
1986	77,413,379
1987	85,326,277
1988	110,323,526
1989	137,553,873
1990	<u>138,336,119</u>
Totals	<u>\$ 644,026,574</u>

AVERAGE ESTABLISHED ROYALTY RATE

Royalty economics dictates that the development of fair market value royalty rates for the use of intellectual property require an evaluation of comparable rates in the market place. The final decision in marketing any product is whatever amount would have been negotiated in the open market in an arms length transaction. The emphasis on market transactions is an important factor in the establishment of a reasonable royalty rate due to the high significance the court places on established royalty rates in making such a determination.

The Established royalty rate for this report was determined by analyzing license agreements that Titan Sports entered into with its licensees . A total of 26 agreements were analyzed and a simple average was calculated using the royalty rates governing these 26 agreements. Analysis of these rates using a simple average resulted in an average established royalty rate of 8.173 percent (Exh 1).

ADJUSTMENT TO THE AVERAGE ESTABLISHED ROYALTY RATE

Consideration has been given to the assets which were used by Titan in earning its income through the use of the marks. To develop marketability for any type of intellectual property the owner has to consider the cost necessary for a potential licensee to exploit the property to his advantage. It is the primary intent here to adjust the average established royalty percentage to reflect Titan's percentage of cost expended to develop the mark.

The variable and general administrative cost directly related to the production of the gross income base were used in the development of the total cost percentages (Exhibits 2, 3, 4 and 5). I have based the variable direct costs and the general administrative cost on such costs as presented in Titan's audited financial statements and U.S tax returns filed with the Internal Revenue Service. These variable cost and general administrative cost percentages are as follows:

<u>Year</u>	<u>Variable Direct Cost Percentage To Gross Income</u>	+	<u>Gen Adm Cost Percentage to Gross Income</u>	=	<u>Total Variable and Gen Adm Cost Percent To Gross Income</u>
1984	80.8%	+	18.2%	=	99.0%
1985	70.4%	+	15.6%	=	86.0%
1896	60.0%	+	23.3%	=	83.4%
1987	69.3%	+	23.2%	=	92.5%
1988	70.9%	+	21.3%	=	92.3%
1989	66.19%	+	20.9%	=	87.14%
1990	(see footnote 1)				

REASONABLE ROYALTY RATE

The reasonable royalty rate for each year was determined by adjusting the average established royalty rate by the percentage of direct variable cost and general administrative cost associated with the production of the income (Exhibit 6).

These reasonable royalty rates are as follows:

<u>Year</u>	<u>Average Established Royalty Rate</u>	-	<u>Total Variable and G&A Cost Percentage To Gross Income</u>	=	<u>Reasonable Royalty Rate</u>
1984	.08173	-	.99064	=	.00076
1985	.08173	-	.86027	=	.01141
1986	.08173	-	.83484	=	.01349
1987	.08173	-	.92539	=	.00609
1988	.08173	-	.92319	=	.00627
1989	.08173	-	.87140	=	.01050
1990	(see footnote 1)				.00609

CONCLUSIONS

The amount of damages due United Wrestling Association for each year were computed by multiplying the reasonable royalty rate by gross income as reported on line 1 of the U.S. Tax Return. This resulted in total damages due UWA of \$5,300,245 dollars for the years 1984, 1985, 1986, 1987, 1988, 1989 and 1990. A detailed analysis of this computation is as follows (Exhibit 7):

<u>Year</u>	<u>Gross Income per U.S. Tax Return</u>		<u>Reasonable Royalty Rate</u>	<u>= Damages Due UWA</u>
1984	\$ 29,596,974	X	.00076	= \$ 22,631
1985	63,125,159	X	.01141	= 720,865
1986	77,413,379	X	.01349	= 1,044,976
1987	85,326,277	X	.00609	= 520,268
1988	112,674,793	X	.00627	= 707,292
1989	137,553,873	X	.01050	= 1,445,669
¹ 1990	<u>138,336,119</u>	X	.00609	= <u>842,467</u>
Total	<u>\$ 644,026,574</u>			<u>\$ 5,300,245</u>

¹ 1990 damages were determined using line 16 of the Wisconsin tax return which is the same as line one of the 1990 U.S. Income Tax Return. There was no information available to ascertain the cost to apportion the established royalty rate so it was determined in fairness to use the median reasonable rate determined in this analysis.

INTEREST

Interest on the damages due UWA for late payment will be calculated under the following assumptions:

1. Payment of royalties were due 90 days after the end of Titan Sports Inc. fiscal year.
2. The interest rate applied will be 2 points above the prime rate as determined by Chemical Bank. This rate is the same rate which Titan uses in their license agreements. Reference to this fact may be found in section 18, which is the Payments and Statements section of their license agreements . This rate will be adjusted each year on the anniversary of the due date of the royalty payment as stated in part one of this section. For information regarding the prime rate as determined by Chemical Bank see Exhibit 8.

(Continued on Next Page)

Total interest for the years 1984, 1985, 1986, 1987, 1988, 1989, and 1990 is \$2,657,921 dollars. Total damages and interest for the years 1984, 1985, 1986, 1987, 1988, 1989, and 1990 is \$7,958,166 dollars. A detailed analysis of these calculations are as follows:

<u>Year</u>	<u>Damages Due UWA</u>	<u>Interest</u>	<u>Damages and Int</u>
1984	\$ 22,790	\$ 26,653	\$ 49,443
1985	720,258	681,238	1,401,496
1986	1,044,306	803,000	1,847,306
1987	519,637	314,107	833,744
1988	706,471	310,134	1,016,605
1989	1,444,316	403,112	1,847,428
1990	<u>842,467</u>	<u>119,677</u>	<u>962,144</u>
Total	<u>\$5,300,245</u>	<u>\$2,657,921</u>	<u>\$7,958,166</u>

REFERENCES

Callmann Unfair Competition Section 22.49-22.60.

Fitzpatrick, J.M. (Winter 80). Damages in trademark and patent infringement litigation. APLA Quarterly Journal. pp 29-45.

Gordon V. Smith and Russell L. Parr (1989). Valuation of Intellectual Property and Intangible Assets. John Wiley and Sons.

Hefter, L.R. & Mintz, H. (Winter 80.) Accountings in patent and trademark cases. APLA Quarterly Journal. pp 46-65

Koelemay, J.M. jr. (Sept-Oct 82) Monetary relief for trademark infringement under the Lanham Act. Trademark Reporter V.72 pp 458-546

Exhibit 1

ANALYSIS OF LICENSE AGREEMENTS BETWEEN TITAN SPORTS INC. AND ITS LICENSEES

Description	Date	Term	Rate
Hasbro Inc	1\1\89	2	.08
Candy U.S.A	12\22\88	2	.1
Solaris Marketing Group	1\1\89	5	.1
American Technos	10\19\88	4	.05
National Latex	11\16\90	2	.09
Voyager Communications	1\1\91	2	.09
Helm Toy Corp	12\27\90	2	.09
General Biscuit Brands	5\1\90	2	.05
Playing Card Company	5\1\91	2	.09
Happiness Express	12\10\90	2	.09
Merchandise Dev Corp	10\4\90	2	.085
Well Made Toy	3\6\91	2	.09
Sports Puzzles Inc	1\5\89	2	.09
Almaleo USA	5\16\91	2	.04
Union Underwear	4\8\91	2	.08
Pressman Toy corp	7\10\91	2	.09
Rubie Costume Co	11\16\90	2	.09
Rosalco Inc	3\1\91	2	.09
Multi Toys	7\23\90	2	.085
Ralston Purina Company	8\6\91	2	.03
Azrak Hamway	11\16\90	2	.09
Mcarthur Towels	7\10\90	2	.085
Mul Marketing	12\27\90	2	.09
Tiger Electronics	12\22\89	2	.085
Trademaster	10\18\90	2	.09
Universal Industries	10\4\90	2	.085
Total of all rates examined(26)			2.125
Average Established Royalty Rate			.0817308
The average established royalty rate is determined by dividing the total of all rates examined by the number of rates examined which is 26			

Exhibit 2

CALCULATION OF THE VARIABLE DIRECT COST AS A PERCENTAGE
OF GROSS RECEIPTS

YEAR	GROSS RECEIPTS LINE 1 US TAX RETURN	VARIABLE DIRECT COST	VAR DIRECT COST AS A PERCENTAGE OF GROSS INCOME
1984	29596974	23923948	.8083241212
1985	63125159	44454789	.7042325074
1986	77413379	46524206	.6009840495
1987	85326277	59146428	.6931795231
1988	112674793	79936343	.7094429985
1989	137553873	91051052	.6619301225
1990	138336119	see footnote	exhibit 7
TOTAL	644026574	345036766	

The variable direct cost as a percentage of gross income was computed by dividing variable direct cost by gross income from line 1 of the U.S. Tax Return.

Exhibit 3

CALCULATION OF GENERAL AND
ADMINISTRATIVE EXPENSES AS A PERCENTAGE OF GROSS INCOME

YEAR	GROSS RECEIPTS LINE 1 US TAX RETURN	GENERAL AND ADM COST	GEN & ADM COST AS A PERCENTAGE OF GROSS INCOME
1984	29596974	5396125	.18232
1985	63125159	9850376	.15605
1986	77413379	18103586	.23386
1987	85326277	19814222	.23222
1988	112674793	24084524	.21375
1989	137553873	28814638	.20948
1990	138336119	see footnote 7	
TOTAL	644026574	106063471	

The computation of the general and administrative cost as a percentage of gross income is calculated by dividing the general and administrative cost by the gross receipts from line 1 of the U.S. Tax Return.

Exhibit 4

CALCULATION OF TOTAL DIRECT COST AND TOTAL GENERAL AND ADMINISTRATIVE COST AS A PERCENT OF GROSS INCOME.

YEAR	DIRECT COST AS PERCENT OF GROSS INCOME	GENERAL AND ADMINISTRATIVE COST AS PERCENT OF GROSS INCOME	TOTAL DIRECT COST AND GEN & ADM COST AS PERCENT OF GROSS INCOME
1984	.80832	.18232	.99064
1985	.70423	.15604	.86027
1986	.60098	.23385	.83483
1987	.69317	.23221	.92538
1988	.70944	.21375	.92319
1989	.66193	.20947	.8714
1990	see footnote exhibit 7		

The calculation of total direct cost and general and administrative cost as a percent of gross income was computed by adding direct cost as a percent of gross income to general and administrative cost as a percent of gross income.

Exhibit 5

CALCULATION OF THE PERCENT OF THE AVERAGE ESTABLISHED ROYALTY RATE APPORTIONED TO TOTAL DIRECT AND GENERAL AND ADMINISTRATIVE COST.

YEAR	AVERAGE ESTABLISHED ROYALTY RATE	TOTAL DIRECT AND GENERAL ADM COST AS A PERCENT OF GROSS INCOME	TOTAL DIRECT AND GENERAL ADM COST APPORTIONED TO THE AVG ESTABLISHED ROYALTY RATE
1984	.08173	.99064	.08097
1985	.08173	.86027	.07031
1986	.08173	.83484	.06823
1987	.08173	.92539	.07563
1988	.08173	.92319	.07545
1989	.08173	.8714	.07122
1990	.08173	SEE FOOTNOTE EXHIBIT 7	

The percent of the average established royalty rate apportioned to the total direct and general administrative cost is computed by multiplying the average established royalty rate by the total direct and general and administrative cost as a percent of gross income.

Exhibit 6

CALCULATION OF REASONABLE ROYALTY RATE

YEAR	ESTABLISHED AVG ROYALTY RATE	ESTABLISHED AVG ROYALTY RATE APPORTIONED TO COST	REASONABLE ROYALTY RATE
1984	.08173	.08096	.00077
1985	.08173	.07031	.01142
1986	.08173	.06823	.0135
1987	.08173	.07563	.0061
1988	.08173	.07545	.00628
1989	.08173	.07122	.01051
1990	.08173	SEE FOOTNOTE EXHIBIT 7	

The Reasonable royalty rate for each year is computed by subtracting the established average royalty rate apportioned to cost from the established average royalty rate.

The relationship between UWA damages and Titan Sports Inc. gross receipts.

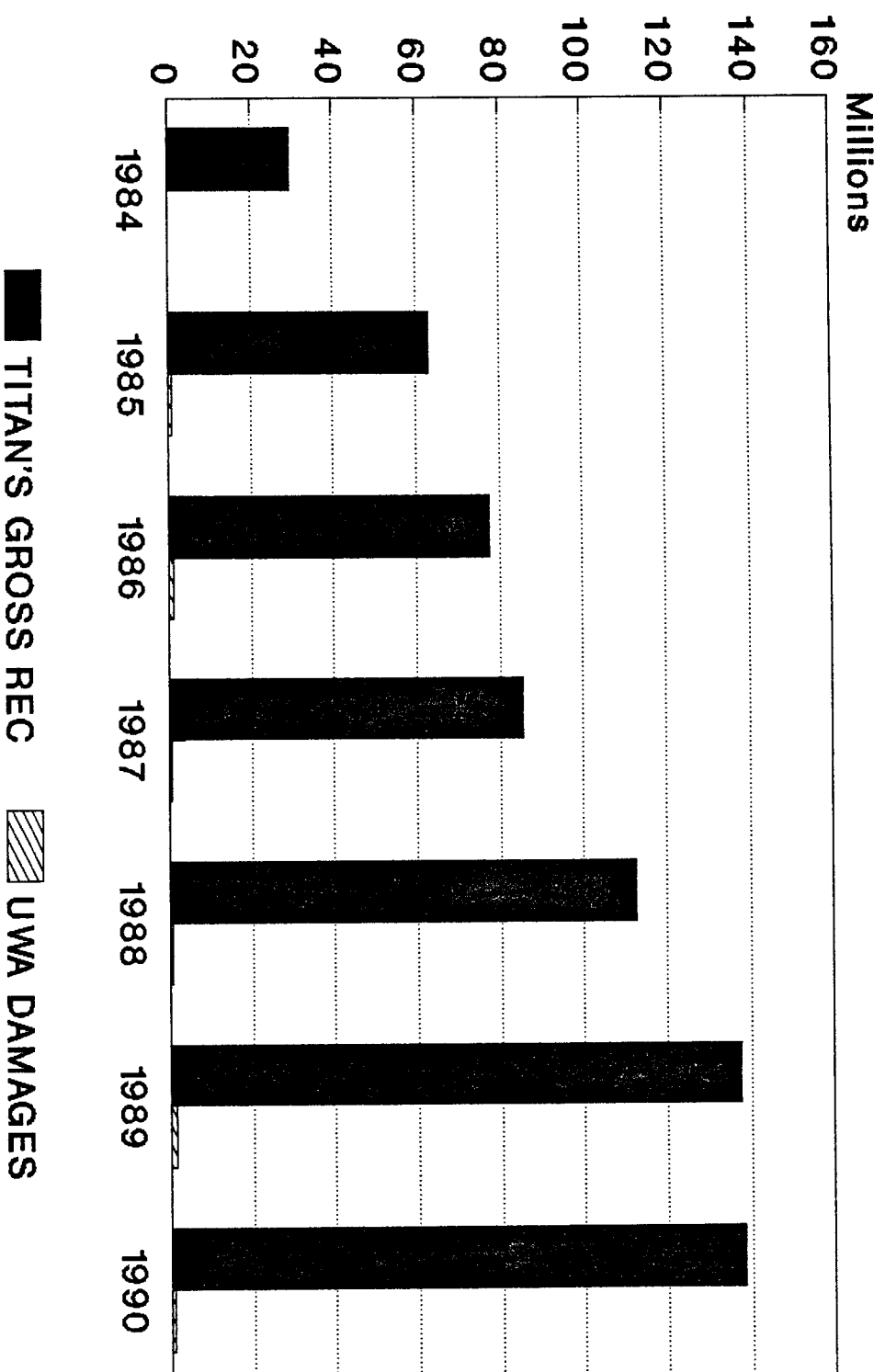


Exhibit 7A

Exhibit 8
Chemical Bank Prime Rates used to calculate
interest on damages

TERM	RATE	DATE RATE WAS SET
8\1\85	.095	6\18\85
8\1\86	.08	7\11\86
8\1\87	.0825	5\15\87
8\1\88	.095	7\14\88
8\1\89	.105	7\31\89
8\1\90	.1	1\8\90
8\1\91	.085	5\1\90
9\1\92	.06	7\2\92

Exhibit 9

CALCULATION OF INTEREST COMPOUNDED ANNUALLY AT 2% ABOVE THE
PRIME RATE AS ESTABLISHED BY CHEMICAL BANK ON THE
COMPUTED DAMAGES DUE THE UNITED WRESTLING ASSOCIATION.

1984 DAMAGES 22788

YEAR	PRIME RATE 8\1\85 THRU 12\31\92	ADJUSTMENT 2 PNTS	PRIME PLUS 2 PNTS	INTEREST	DAMAGES PLUS INTEREST
1985	.095	.02	.115	2620.62	25408.62
1986	.08	.02	.1	2540.862	27949.48
1987	.0825	.02	.1025	2864.822	30814.30
1988	.095	.02	.115	3543.645	34357.95
1989	.105	.02	.125	4294.744	38652.69
1990	.1	.02	.12	4638.323	43291.02
1991	.085	.02	.105	4545.557	47836.57
1992	.06	.02	.0335	1604.163	49440.74

TOTAL 26652.74

1992 INT CALCULATION

NUMBER OF DAYS FROM 8/1 THRU 12/31	153
TOTAL DAYS IN A YEAR	365
INTEREST RATE	.08
PER DAY RATE	.0002192

Exhibit 10

CALCULATION OF INTEREST COMPOUNDED ANNUALLY AT 2% ABOVE THE
PRIME RATE AS ESTABLISHED BY CHEMICAL BANK ON THE
COMPUTED DAMAGES DUE THE UNITED WRESTLING ASSOCIATION.

1985 DAMAGES 720258

YEAR	PRIME RATE 8\1\86 THRU 12\31\92	ADJUSTMENT 2 PNTS	PRIME PLUS 2 PNTS	INTEREST	DAMAGES PLUS INTEREST
1986	.08	.02	.1	72025.8	792283.8
1987	.0825	.02	.1025	81209.09	873492.9
1988	.095	.02	.115	100451.7	973944.6
1989	.105	.02	.125	121743.1	1095688.
1990	.1	.02	.12	131482.5	1227170.
1991	.085	.02	.105	128852.9	1356023.
1992	.06	.02	.0335	45473.21	1401496.

TOTAL

681238.2

1992 INT CALCULATION

NUMBER OF DAYS FROM 8/1 THRU 12/31	153
TOTAL DAYS IN A YEAR	365
INTEREST RATE	.08
PER DAY RATE	.0002192

Exhibit 11

CALCULATION OF INTEREST COMPOUNDED ANNUALLY AT 2% ABOVE THE
PRIME RATE AS ESTABLISHED BY CHEMICAL BANK ON THE
COMPUTED DAMAGES DUE THE UNITED WRESTLING ASSOCIATION.

1986 Damages 1044306

YEAR	PRIME RATE 8\1\87 THRU 12\31\92	ADJUSTMENT 2 PNTS	PRIME PLUS 2 PNTS	INTEREST	DAMAGES PLUS INTEREST
1987	.0825	.02	.1025	107041.4	1151347.
1988	.095	.02	.115	132404.9	1283752.
1989	.105	.02	.125	160469.0	1444221.
1990	.1	.02	.12	173306.6	1617528.
1991	.085	.02	.105	169840.4	1787368.
1992	.06	.02	.0335	59938.05	1847306.
TOTAL				803000.4	

1992 INT CALCULATION

NUMBER OF DAYS FROM 8/1 THRU 12/31	153
TOTAL DAYS IN A YEAR	365
INTEREST RATE	.08
PER DAY RATE	.0002192

Exhibit 12

CALCULATION OF INTEREST COMPOUNDED ANNUALLY AT 2% ABOVE THE
PRIME RATE AS ESTABLISHED BY CHEMICAL BANK ON THE
COMPUTED DAMAGES DUE THE UNITED WRESTLING ASSOCIATION.

1987 Damages 519637

YEAR	PRIME RATE 8\1\88 THRU 12\31\92	ADJUSTMENT 2 PNTS	PRIME PLUS 2 PNTS	INTEREST	DAMAGES PLUS INTEREST
1988	.095	.02	.115	59758.26	579395.3
1989	.105	.02	.125	72424.41	651819.7
1990	.1	.02	.12	78218.36	730038.0
1991	.085	.02	.105	76653.99	806692.0
1992	.06	.02	.0335	27051.81	833743.8
TOTAL				314106.8	

1992 INT CALCULATION

NUMBER OF DAYS FROM 8/1 THRU 12/31	153
TOTAL DAYS IN A YEAR	365
INTEREST RATE	.08
PER DAY RATE	.0002192

Exhibit 13

CALCULATION OF INTEREST COMPOUNDED ANNUALLY AT 2% ABOVE THE
PRIME RATE AS ESTABLISHED BY CHEMICAL BANK ON THE
COMPUTED DAMAGES DUE THE UNITED WRESTLING ASSOCIATION.

1988 Damages 706471

YEAR	PRIME RATE 8\1\89 THRU 12\31\92	ADJUSTMENT 2 PNTS	PRIME PLUS 2 PNTS	INTEREST	DAMAGES PLUS INTEREST
1989	.105	.02	.125	88308.88	794779.9
1990	.1	.02	.12	95373.59	890153.5
1991	.085	.02	.105	93466.11	983619.6
1992	.06	.02	.0335	32984.94	1016605.
TOTAL				310133.5	

1992 INT CALCULATION

NUMBER OF DAYS FROM 8/1 THRU 12/31	153
TOTAL DAYS IN A YEAR	365
INTEREST RATE	.08
PER DAY RATE	.0002192

Exhibit 14

CALCULATION OF INTEREST COMPOUNDED ANNUALLY AT 2% ABOVE THE
PRIME RATE AS ESTABLISHED BY CHEMICAL BANK ON THE
COMPUTED DAMAGES DUE THE UNITED WRESTLING ASSOCIATION.

1989 Damages 1444316

YEAR	PRIME RATE 8\1\90 THRU 12\31\92	ADJUSTMENT 2 PNTS	PRIME PLUS 2 PNTS	INTEREST	DAMAGES PLUS INTEREST
1990	.1	.02	.12	173317.9	1617634.
1991	.085	.02	.105	169851.6	1787485.
1992	.06	.02	.0335	59941.98	1847427.
TOTAL				403111.5	

1992 INT CALCULATION

NUMBER OF DAYS FROM 8/1 THRU 12/31	153
TOTAL DAYS IN A YEAR	365
INTEREST RATE	.08
PER DAY RATE	.0002192

Exhibit 15

CALCULATION OF INTEREST COMPOUNDED ANNUALLY AT 2% ABOVE THE
PRIME RATE AS ESTABLISHED BY CHEMICAL BANK ON THE
COMPUTED DAMAGES DUE THE UNITED WRESTLING ASSOCIATION.

1990 Damages 842467

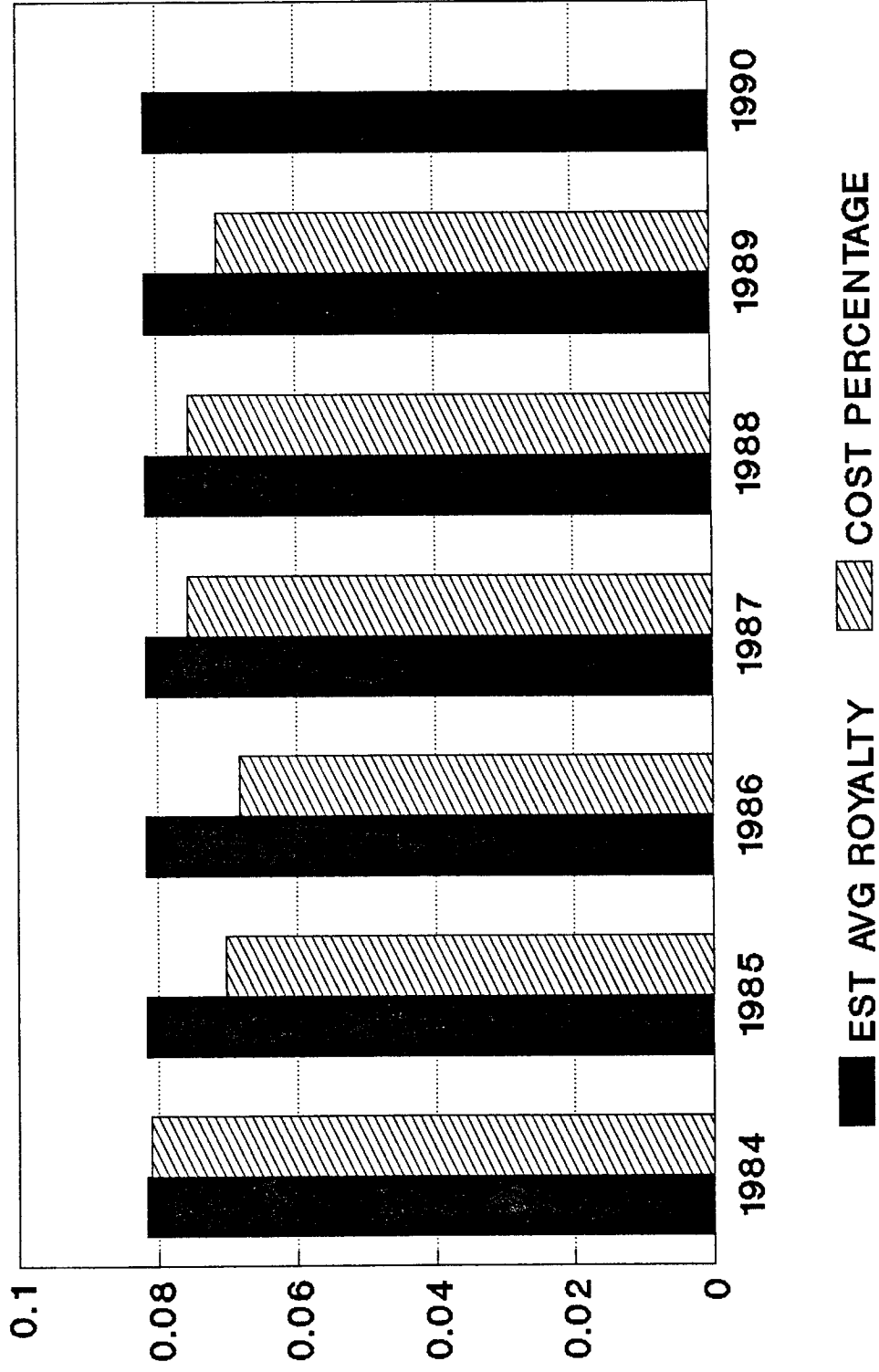
YEAR	PRIME RATE 8\1\91 THRU 12\31\92	ADJUSTMENT 2 PNTS	PRIME PLUS 2 PNTS	INTEREST	DAMAGES PLUS INTEREST
1991	.085	.02	.105	88459.04	930926.0
1992	.06	.02	.0335	31217.90	962143.9
TOTAL				119676.9	

1992 INT CALCULATION

NUMBER OF DAYS FROM 8/1 THRU 12/31	153
TOTAL DAYS IN A YEAR	365
INTEREST RATE	.08
PER DAY RATE	.0002192

The relationship between the average established royalty rate and the percentage of total cost (complementary assets) used to exploit the marks.

Exhibit 5A



1990 cost data not available